

# TIM EATON

## Appellate Ace

by David Conway



In a casual conversation, J. Timothy Eaton does not come across as one of the most distinguished alumni ever to have graduated from Southern Illinois Law School or as Illinois Appellate Lawyer of the year for 2010 or as a **Shelsky & Froelich** partner.

That is a good thing. He is extremely easy to talk to and has humility despite all of his accomplishments. Perhaps this is because Eaton hails from humble roots. He grew up in Decatur, a place he was proud to call home.

Decatur was the quintessential Midwestern town to grow up in, Eaton says. "I was very blessed to have grown up in Decatur in the '50s and '60s. Although the economy in my hometown had its ups and downs, for the most part everyone was gainfully employed at one of the local factories, like ADM, Staley's, Caterpillar or Firestone."

This is the kind of upbringing you would expect from the heart of Illinois during this

period. "My mother was an elementary school teacher and my father was a salesman at a family-owned small business. Entertainment centered around bowling, golf, dinner at the Elks club, or some families had their boats on Lake Decatur. People were hard-working, blue-collar and had down-home values. My high school years revolved around sports, homecoming floats and who was dating whom."

Eaton left Decatur after high school to attend Miami University in Oxford, Ohio. After graduating from college he headed to Washington, D.C., to become a legislative assistant for a congressman from Maryland.

It was an important time in Washington, and he found himself surrounded by the Watergate controversy, a scandal the whole country was paying attention to. The congressman he was working for had an influential position at the time.

"This was 1973. [The congressman] was a member of the House Judiciary Committee, and that committee was one of my assignments in his office. During my year there, that committee had the formulation of a new judicial code, an impeachment resolution centering on the vice president, the confirmation of a new vice president, three impeachment resolutions centering on the president, and finally impeachment hearings of the president. It became the ultimate intersection of law and politics, and I found it fascinating."

Eaton says the experience was the impetus for his career. "I decided then that I wanted to go to law school because I witnessed firsthand how the rule of law provided a framework for uniting this country during a very fragile time."

He decided to enroll in law school the following fall and chose to attend Southern

Illinois Law School in Carbondale, just a few hours south of Decatur. After law school he had the opportunity to clerk in Belleville for Justice Joseph H. Goldenhersh, who was Chief Justice of the Illinois Supreme Court during Eaton's clerking tenure. That experience has shaped Eaton's life ever since.

"It was while there that I got to see the [Illinois] Supreme Court from his vantage point," says Eaton. He has used the principles emphasized by Goldenhersh to this day.

While clerking, Eaton went back to school at Washington University in St. Louis for his LL.M. "I had thought about teaching," says Eaton, "but while getting my LL.M. I realized that the best teachers I had practiced before."

He decided to practice rather than teach right away, and from there Eaton has never

looked back.

He returned to his roots in Decatur and went to work right away in general litigation at a small firm. “I was handling everything from traffic tickets to divorces to routine misdemeanors,” says Eaton. “That really got me thinking on my feet.” It was practical experience that some of his colleagues never saw at larger firms.

As Eaton describes, “I learned to handle all aspects of the case at that time, including filing my own briefs.”

He also had some close supervision and some great mentors who allowed him to develop quickly as an attorney. “I was in a six-person firm where everyone became my mentor,” says Eaton. “And all of the other lawyers and judges in town served that role as well.”

He enjoyed the support of Decatur’s legal network, and the experience left a lasting impression. According to Eaton, “The Decatur bar was a very welcoming group and it really instilled in me professional values that have always remained. Although I only practiced in Decatur for a little over three years, it left an indelible impression about how to conduct oneself both as an advocate and as a member of a profession. Decatur lawyers are the best, and I will always be grateful for their guidance at the start of my legal career.”

In February 1983, Eaton began practicing with Hinshaw & Culbertson LLP in Chicago. His transition from practicing in Decatur took some getting used to. As Eaton recalls, “The move was intimidating at first. I was feeling comfortable with my practice and to come up here was totally new.” He knew he wanted to be in Chicago and the adjustments were temporary.

Eaton was interested in appellate work and had already become active with appellate groups in Decatur. “I had become involved with the Appellate Lawyers Association before I moved because just the opportunity to talk to other lawyers focusing on appellate work was interesting to me. I could concentrate my practice in certain areas.”

Having some company made the transition to Chicago even easier. “I met my wife, Jane, three weeks after moving to Chicago,” says Eaton. “We met in March and were married in December.” They have been together ever since and have two sons and a daughter.

## Career Cases

Eaton moved from Hinshaw & Culbertson to Ungaretti & Harris in 1986 and stayed there for 20 years, continuing a niche in appellate practice and general commercial litigation.

Over the course of his career he has worked on some important cases. As Eaton describes, “One of the most significant cases I’ve worked on, a career case, was where a train containing dioxin derailed. I got to be a part of the appellate team

that was working on the case while it was being tried.”

It was not a short appeal. The team filed a post-trial motion that was over 2,300 pages, but all of that effort ended up paying off. “It worked its way up to the appellate court where eventually the verdict against my client Monstanto was reversed,” says Eaton.

He has also had the opportunity to work on political cases. Politics originally brought him into the legal profession when he was in Washington working as a legal intern, and with these political cases his career came full circle.

“I entered that same intersection of law and politics years later when I handled two cases for former Governor Blagojevich. One of the matters involved his Family Care Act, which was not only challenged constitutionally but became one of the articles in his impeachment. I assisted in the appeal before the Illinois Supreme Court, but the matter was eventually resolved by Governor Quinn before any resolution was needed by the high court.”

That was not the only time he would represent Governor Blagojevich. “I also represented the former governor in an appeal before the 7th U.S. Circuit Court of Appeals regarding his parole and pardon power. Although the court agreed with our position that there was no due process right to a timely disposition of those petitions seeking the exercise of the governor’s parole and pardon power, the current governor is now addressing the backlog issue. In both instances, the legality of his position was being overshadowed by the politics of his actions.”

As an appellate lawyer, Eaton is similar to a bullpen closer in baseball. He often is brought into a case he has no history with before the jury reaches its verdict. At that point he is responsible for devising an effective approach for an appeal.

As Eaton says, “Typically I become involved after a verdict has been entered. Sometimes I am brought in before a verdict during jury instructions in order to preserve issues for appeal.”

Because objections must be timely made or waived, Eaton has an important duty since the whole fate of the case could rest in his hands. When a case is being appealed, the attorneys who tried it earlier did not obtain a favorable verdict. But Eaton always is forward-thinking and does not worry about how the case was handled before he was involved.

“I make a point when I’m brought in never to second-guess what the other lawyers have done during the case,” says Eaton. “I work with what we have, and I try to put it in the best possible light for the appeal.”

There can be some uncomfortable times when Eaton first joins a case. Lawyers who have devoted literally years of their lives to a case sometimes see Eaton for the first time after a verdict has been reached. It is no surprise that he could be viewed as an

outsider. However, Eaton does his best to make sure the work comes before egos.

“I realize that there can be tensions when somebody is brought in to look at what another has done, and I try to make that process as easy as possible,” says Eaton. “My job at that point is not to lecture someone how it should’ve been done. My job is to address what we can do to make this record complete.”

He has been successful in doing this and has established himself as a premier appellate lawyer in the state. While Eaton has practiced many varieties of litigation, recently his practice has focused on appeals and increasingly on arbitration.

## Arbitration: Acting as a Private Judge

Eaton’s foray into alternative dispute resolution began with an invitation from the American Arbitration Association. Overall, it has been an enjoyable experience. “It is interesting acting as a ‘private judge,’” he says. “I’ve done it for the past five years, graduating from smaller cases to bigger ones.”

Arbitration has also been a great learning experience. Eaton has incorporated what he has seen as an arbitrator into his practice. “I get to learn from the good attorneys and also see some of the mistakes made when practicing from another perspective,” says Eaton.

“I also get to write opinions. When you write an opinion from a judge’s point of view as an arbitrator, it gives you an idea what a judge is looking for when you write for a judge in your practice.”

Arbitration has become a very popular means of resolving cases outside of the judicial system. It was supposed to be less expensive than litigating in courts. “I’m not sure that’s the case,” says Eaton. “I think it will get that way, but I think there has to be some controls set so it does not become the same as courtroom litigation. There will be a lot of economic pressure on the courts. I hope we don’t get to the point when, because of limited resources, the courts are unable to accommodate as many litigants as they have in the past. As for now, courts can still handle the case load.”

Most of the cases Eaton sees involve commercial litigation. More and more companies include pre-dispute arbitration agreements in their boilerplate contracts, which causes many of these cases to go to arbitration.

One reason companies choose arbitration is that it avoids a lengthy appellate process. In fact arbitrations are final, barring evidence of arbitrator impropriety. It is interesting that Eaton, an appellate lawyer, has become so involved with arbitration.

“I have really become a proponent of using ADR, but as an appellate lawyer that is an interesting paradox. But there will always be opportunities for people like myself who love doing appeals.”

Arbitration has helped Eaton become a more complete lawyer. It is another experience to add to a repertoire of appeals and litigation. When acting as arbitrator, he can empathize with the attorneys coming in front of him because the odds are that he has been in their shoes.

“I understand what it’s like in the trenches,” says Eaton. “I’ve had bench trials. I understand why an attorney will make an objection in front of an arbitrator, but not in front of a jury. I understand the time constraints of some of these attorneys from smaller firms because I’ve practiced in a smaller firm.

“When I first started, I was on my feet every day. All of that was a good experience for me. As an arbitrator I can appreciate how attorneys might handle things differently.”

Eaton has mediated cases as well. Instead of rendering a decision, mediators allow the parties to reach the decision themselves. As Eaton says, “Mediation is a lot more work than being an arbitrator because you’re not calling the balls and strikes. You’re not judging the correctness of the decision. Your job is to make the parties come together. It presents another viable alternative to trying cases in court.”

## A Life Outside of Practicing

When Eaton was going to school for his LL.M., he realized he needed practical experience to become an effective teacher. Now that he has been practicing, the journey may have become the destination. “I have taught appellate advocacy at night at Loyola,” says Eaton. “Eventually I might want to get back into doing that.” Meanwhile, he is very content with his practice as well as with his life outside of the practice.

Eaton is very active with the Illinois State Bar Association. As a young attorney he was elected to the ISBA assembly. As Eaton jokes, “I’m pretty sure there were 23 candidates for 23 spots.”

He continued to stay active with the ISBA and was the 2001-2002 president. Eaton enjoyed campaigning for that role because it meant traveling around the state, including to Decatur where he started his career. As Eaton says, “I was running as a Chicago attorney, but I knew so many people downstate it was like going home when I was campaigning.”

Eaton continues to stay active to this day. “My wife Jane and I have attended many bar association events together and have made many friends.”

When he’s not working, Eaton enjoys spending time with his two sons and his daughter. “I’m very involved with what the kids are doing both in school and out of school,” he says.

“I made a decision early on that I was going to be there for the baseball games, softball games and lacrosse games. I’ve pretty much lived up to that. I’ve enjoyed those years tremendously.” ■