
Volume 67

Issue 4 Summer 2018: *And Justice For All: A
Symposium In Memory of the Honorable Richard D.
Cudahy*

Article 2

Judge Richard D. Cudahy: An Appreciation

John C. Roberts

Follow this and additional works at: <https://via.library.depaul.edu/law-review>



Part of the [Law Commons](#)

Recommended Citation

John C. Roberts, *Judge Richard D. Cudahy: An Appreciation*, 67 DePaul L. Rev. (2018)
Available at: <https://via.library.depaul.edu/law-review/vol67/iss4/2>

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact wsulliv6@depaul.edu, c.mcclure@depaul.edu.

JUDGE RICHARD D. CUDAHY: AN APPRECIATION

*John C. Roberts**

I am honored to introduce this special Symposium Issue, sponsored by the *DePaul Law Review*, which pays tribute to a remarkable lawyer and Judge, Richard D. Cudahy. Special thanks to the DePaul College of Law students who made this Symposium possible and to the guest speakers who participated.

I first met Dick Cudahy in the 1970s, when I was Associate Dean at Yale Law School. He was one of our most distinguished alums, though at that point his judicial career lay before him, and he was a devoted fan and supporter of the law school. I was in charge of our alumni relations and fundraising, and we met from time to time at law school events. He would later be one of our most active Chicago alums, assisting in the creation of a Yale Law School alumni club here. When I came to Chicago as Dean of the DePaul University College of Law in 1986, he took me under his wing, introducing me to people in the city's legal community that I needed to know and supporting my efforts to expand the programs and reputation of DePaul. Since we had both practiced administrative law and were deeply interested in the regulatory process, we talked from time to time about current legal developments. Particularly after he took senior status on the Court of Appeals in 1994, we used to meet regularly for lunch at the Union League Club to discuss the latest federal cases in administrative law. He would send me reprints of his articles and would take the time to comment thoughtfully on mine when I sent them to him. In this way I came to appreciate his exceptional qualities as a lawyer, a judge, and a friend. His later contributions to DePaul only deepened and sharpened that appreciation.

Let me first give you a brief overview of Judge Cudahy's career. What is noteworthy about his life is the truly amazing variety of his experience, which I have no doubt contributed significantly to his success as a federal judge. He was a member of a legendary Wisconsin family. His grandfather founded the Cudahy meatpacking company and was very active in the civic and political life of the state. Judge Cudahy was born in Milwaukee in 1926. He briefly attended North-

* Dean Emeritus and Professor Emeritus, DePaul University College of Law.

western University, but graduated from the United States Military Academy at West Point in 1948. He served several years as an officer in the Army Air Corps, and upon his discharge attended Yale Law School. He then clerked on the Second Circuit Court of Appeals for the widely respected judge Charles Clark, who was a former Yale Law School Dean and became one of Judge Cudahy's heroes and role models. His first legal job after clerking was in the Office of the Legal Advisor in the State Department. He then moved to Chicago as an associate at the venerable firm of Isham, Lincoln and Beale, where he specialized in energy law. In 1961 his obligation to the Cudahy family business brought him back to Milwaukee, and for the next ten years he successfully managed their meatpacking company as President and CEO. When the company was sold in 1971 Cudahy returned to private practice, this time in Milwaukee.

During the 1960's and 1970's Judge Cudahy played an important role in Wisconsin politics and public affairs. A lifelong progressive Democrat, he served as President of the Milwaukee Urban League, chaired the Wisconsin Democratic Party, and ran for state Attorney General in 1968. He was an early supporter of John Kennedy and later was active in Jimmy Carter's presidential campaign.

Perhaps especially relevant for us at this Symposium, Judge Cudahy left private practice in 1972 to serve as a member and chairman of the Wisconsin Public Service Commission. He advocated for the modernization of energy regulation and explored innovative ways to improve the regulatory process. In 1975 he left the Commission and in 1976 he rejoined Isham, Lincoln and Beale to open their Washington D.C. office, again specializing in energy regulation. President Carter nominated him for a seat on the Seventh Circuit Court of Appeals in 1979, and he took Senior Status in 1994.

I leave it to legal scholars to delve into Judge Cudahy's many contributions to the law while a federal judge. As his colleague Richard Posner detailed in a 2012 tribute, Judge Cudahy was unusually prolific, writing important opinions in a variety of subject areas, but particularly in administrative law. Though he was well known for his liberal political views, he was respected and admired by judges from across the ideological spectrum. Needless to say, he continued to sit actively even after he took Senior Status, and his influence was felt across the country because of his habit of sitting by designation in other circuits. He became one of the nation's most widely known and respected federal judges, especially when his scholarly writing is taken into account. Throughout his tenure as a judge, Judge Cudahy wrote trenchant articles for law reviews and bar publications, particularly in energy law.

He was an important voice in the recent debate over the proper role of deregulation in the energy sphere, and the best mechanisms for both helping the economy and serving consumers.

Judge Cudahy always believed deeply in the critical importance of the organized bar and law related organizations in our legal system. Consequently, he was extremely active in the ABA's Section on regulatory law, the Energy Bar Association, and the American Constitution Society, among others. In recent years, he was honored by a number of these organizations, in recognition of his lifelong contributions. The EBA gave him its lifetime achievement award and the ACS established a writing competition in Regulatory and Administrative Law in his honor.

Judge Cudahy's extraordinarily productive career illustrates something I have long believed—that our federal judges should be selected from among those who have a variety of life experiences to bring to the bench. The federal circuit courts are vitally important in maintaining and strengthening the legal and constitutional framework for our democracy, and federal judges can benefit greatly from real-life experience in government, politics, and business. They face an ever-increasing variety of complex and difficult issues. Yet presidents persist in selecting them mostly from law school faculties and lower state and federal courts. Those who have served in elective office, in regulatory agencies, and as CEOs have a wider perspective about the role of government and the effect that court decisions have on individual lives and businesses. Just look at the experiences Judge Cudahy brought to the bench in 1979—military service, private law practice, civil society, politics, economic regulation, foreign affairs, and corporate leadership. He even had experience as an adjunct law professor, having taught at a variety of schools in Milwaukee, Chicago, and Washington. It is little wonder that he was known for the breadth of his expertise, his compassion for the individual, and his appreciation for the appropriate role of government regulation in promoting both a more robust and a fairer economy.

For those of you who know Judge Cudahy only through his opinions and articles, I can offer a brief sketch of his character and personality. My son, John Jr., a former Editor-in-Chief of the *DePaul Law Review*, clerked for the judge, and remembers the experience as a highlight of his professional life. When I asked him to name the one thing that stood out about his boss, he replied that Judge Cudahy loved his job. That struck me as true. He took great pleasure in the work of judging and the process of analyzing legal issues. He loved crafting well-reasoned and persuasive written opinions, especially dissents, and he en-

joyed the robust give and take with his Seventh Circuit colleagues. He loved to travel and interact with other judges, both here and in other countries. He loved teaching law students about the law and especially about the regulatory process.

He was apparently an extraordinary mentor. Outstanding students from across the country clamored for a Judge Cudahy clerkship, and he helped to shape their careers—eighteen became law professors and five became judges. He listened attentively to the ideas his clerks developed in working on opinions and he helped them to improve their own writing. When I spoke to my son about his clerkship one detail especially struck me—when Judge Cudahy would travel to sit in another Circuit for a time, he would bring his clerks small gifts on his return—something that had a connection with the city he had visited. No wonder he is revered by those who were fortunate enough to have served in his chambers.

While Judge Cudahy was a reserved, gentlemanly, and somewhat quiet person, he was passionate about the law and intensely concerned about the real-life consequences of court decisions. In deciding cases he was always careful to understand the factual details, often taking time to read up on the relevant area, whether it involved finance, science or some especially arcane subject. He was always a prepared and incisive participant in oral argument without being overbearing. Though the judge had strong beliefs, he had very little ego and was slow to anger, which may be one reason he was beloved by his friends, students, and colleagues. All in all, Judge Cudahy was someone to be admired—a man who made his mark as a businessman, a lawyer, and a judge.

To my great pleasure and pride, Judge Cudahy developed over the years a special relationship to the DePaul University College of Law. It is entirely fitting that we should sponsor this daylong celebration of his life and legacy, since he made important contributions to our law school. For example, he taught a course in Regulated Industries as an Adjunct Professor for many years and often told me how much he enjoyed our students. DePaul Law students externed in his chambers and learned much from the experience. Four of his former clerks have been members of our full-time faculty, and three are here today—Patty Gerstenblith, Steve Greenberger, and Max Helveston. Judge Cudahy's direct contributions to DePaul go much deeper, however. Through his family foundation, he supported several of the most significant programmatic innovations in our school's history. One is our outstanding public interest law program, led for many years by Professor Len Cavise. The foundation established summer internships for

DePaul students pursuing public interest law. Another is the Chiapas practicum, also founded by Professor Cavise, which provided our students with an opportunity to work on the ground in Mexico to advance the human rights of indigenous peoples in the region. But the DePaul program which benefitted the most from the judge's support, and from his active participation, is the International Human Rights Law Institute. Since IHRLI is close to my heart, let me briefly brag about its accomplishments and describe the judge's role in its formation.

The 1990's were a time of great upheaval in the world, and there was growing recognition of the positive role that both governments and non-governmental organizations could play in promoting international human rights. One day in 1990 Doug Cassel, then a local lawyer active in public interest law, came to see me and asked whether I would be interested in an idea of his—to create a center at a Chicago law school devoted not just to teaching law students about human rights law but also to becoming directly involved in combatting human rights abuses around the world. I was taken with his vision, with his enthusiasm, and with the timing of his proposal. Since we already had on our faculty Professor Cherif Bassiouni, a world-renowned expert in international criminal law and human rights, it seemed a perfect fit. We went to see the University's president, Father John Richardson, who saw how well such an institute would promote both the Vincenzian ideal of personalism and the order's commitment to human and civil rights. He promised his enthusiastic support. But there was little University money available for the enterprise, so we were left to supplement a small DePaul contribution with outside gifts or grants. Knowing Judge Cudahy's life-long commitment to civil rights and social justice, I decided to approach him for support through his family foundation, the Patrick and Anna Cudahy Fund. We had a wonderful conversation about Doug's vision and eventually the Cudahy Fund made a crucial pledge of regular support, which allowed Doug to leave his job and join us as Executive Director. Judge Cudahy also agreed to Chair and to help organize an Advisory Committee of lawyers and judges to help us.

For a number of years, IHRLI enjoyed a reputation as one of the most successful University-based human rights organizations in the country. Our faculty, our students, and a dedicated group of volunteer lawyers put together an amazing sequence of programs. With Professor Bassiouni serving as Special UN Rapporteur for War Crimes in the former Yugoslavia, the law school became the center of a huge war crimes investigation—assisted by the UN and by founda-

tion grants. The College of Law also created training programs in human rights law for lawyers and judges in the states of the former Soviet Union and in several Central American countries. Many of those participants who trained with us here in Chicago went on to play important roles in promoting human rights at home. With U.S. Agency for International Development assistance, we later helped rebuild law schools and law school libraries in Iraq and Afghanistan, and advised the Palestinian Authority in building its own legal system. None of these signal contributions to human rights around the world would have been possible without the support and leadership of Judge Cudahy. We here at DePaul and many around the world owe him a special debt of thanks.

In fact, the debt that we at DePaul owe this fine judge is just a small part of the story. It should be clear to all who consider his career and character that judges, lawyers, law students, and especially ordinary citizens whose lives he touched are also deeply grateful—for a life well lived and a legacy that will endure. We are proud to honor Judge Richard D. Cudahy with this special Symposium Issue of the *DePaul Law Review*.