


What prompted Judge Posner to suddenly retire?

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Claire Bushey

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Richard Posner, a federal judge known for his prolific writings and acerbic manner, **retired unexpectedly** from the 7th Circuit Court of Appeals, ending his 35 years on the bench just as the Labor Day weekend was beginning. Since then, the 78-year-old jurist has said the sudden move was due partly to the court's disrespect for pro se litigants—men and women who represent themselves without a lawyer.

He talks to Crain's about access to justice, drug laws, "Alice in Wonderland" and **his just-published book**, "Reforming the Federal Judiciary."

Crain's: You have said you accelerated your retirement because you were upset about how the circuit treats pro se litigants. When did this start bothering you?

Posner: It was about six months ago. It's a case called **Miller v. Marberry**, and it's a very unpleasant case. The plaintiff was a prisoner, and when he checked into the prison for his sentence, the first thing he was told to do was to go to the medical clinic to see how he was. He had a brain tumor. And the medical people said, "Your brain tumor is interfering with your balance, and therefore you have to have a low bunk in your cell." So, he goes off to his cell block, and he tells the guard, but the guard says to him, "Where is your document?" The guard says, well, no document, no lower bunk for you. So he's in the upper bunk and sometime later, sure enough, he falls, and he's seriously injured.

He's taken off to the hospital, and he's treated, and he returns. He's sent back to his upper bunk, and then he has another fall. In any event, the warden of the prison likes to walk around the cell blocks. Her walk always carried her right in front of his cell. He would always approach her and say, "Warden, I'm supposed to be in the lower bunk." She just looks at him, she doesn't say anything, and then she continues on her rounds. He files a suit for damages for deliberate indifference to a serious medical need, and while the suit is progressing slowly, he dies, but his parents continue with it.

The district judge, however, throws it out. The parents appeal, and I was on the panel with two other judges. They agreed with the district judge and voted to affirm, and I dissented. This is ridiculous. (The guard and warden) were aware of a serious danger; their own medical staff that told them this.

I thought that was a shocking result.

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I began looking more closely at the pro se cases. I just noticed that they tended to get very casual treatment by the staff attorneys who prepare a memo recommending a disposition of the appeal by the judges. The more I got into it, the more bothered I was by it. The recommendation goes to a panel of judges, and they usually rubber stamp the staff attorney's memo, which is usually to dismiss the appeal.

This has been a problem for a really long time. I guess I'm curious how it never came to your attention before.

I think I was just going along with the culture of the court. None of the judges paid any attention to the pro ses, and I just never woke up to it until I saw this case.

Are there any organizations that you think are addressing the issue satisfactorily?

In my book, I have a list of 10 or 12 organizations. But I haven't yet gotten around to emailing the organizations and talking to someone who runs it or is high up in the hierarchy and finding out what exactly they do. But interestingly, I've received a huge number of emails. I think I received 60 new emails today; I haven't looked at it yet. And a number of them, the person writing the email will say that he or she has a program for staff or pro ses. So, I have a significant list. I have some research assistants at the University of Chicago Law School, and I've asked them to see what they can find out. Let's find out what exactly they do in these programs, how the programs are financed, what are the outcomes, do they represent these people or just try to give them advice because they don't actually have practicing lawyers. There's a legal aid clinic at the University of Chicago Law School, and they actually represent the pro ses. I'm thinking of getting involved with that.

Are you only focused on pro se litigants specifically, or are you focused on them as the most visible symptom of a justice system that is hard to access without money or education?

It's really the latter.

What do you see as the role of the federal judiciary, if any, in improving access to the justice system for people like this?

Well, it's a matter of attitude, and I don't know what can be done. One of the former staff attorneys I talked to recently said I was too critical of the staff attorneys. She said that what I was overlooking is that the staff attorneys (in recommending dismissal) are doing what they think the judges want.

Well, I'm thinking that if you want, in your retirement, to devote yourself to access to justice issues, there's going to be a line of people who will want to recruit you.

Since I have nothing else to do, I'm happy to help out. I'd like to.

A couple of months ago I took a tour of the Cook County Jail. I told the staff I wanted to talk to some of the detainees, and they produced five, who I think were volunteers. Four were black, one was white. All five of them they seemed very relaxed. The fifth one of them, it was the white guy, late middle age. It was obvious that he was a person of high intelligence. I asked the prison staff, "What's a guy like that doing in prison? He's obviously a very intelligent person." What the staff (member) said was that he didn't know this specific person, but he knows the type. It's very simple: He's an addict. This fellow had been in jail for two years.

That is obviously bad. I don't think we should have drug laws, except for fentanyl.

I didn't understand the two years; it seemed like a long time to wait for a trial. But then I learned from the higher-up on the staff, the state judges in Cook County, they don't like trials. So what they like to do is, if someone is put in jail and indicted, and then the prosecutor says, "I'd like you to set a date for the trial," the judge will say, "Well, you know, we're awfully busy, terribly busy, so unfortunately I won't be able to schedule your trial before two years from now." The gimmick there is that the judge is hoping, and this happens sometimes, that the jail will just get tired of holding the guy and just release him.

You have a reputation for, shall we say, a certain tartness of tongue. Where does it come from, this willingness to say exactly what you think no matter whom you upset?

I don't know, except it is a deeply engraved personality trait. I was a very successful student, but I was also an obnoxious student. I greatly offended Dean Erwin Griswold (of Harvard Law School), the famous—what would you call him?—the famous curmudgeon. I was president of the Harvard Law Review, and once a year the president, together with some fossils who were contributors to Harvard, would meet with Griswold to discuss the state of the Harvard Law Review. At this little meeting, Griswold said to me, you know in Langdell Hall, there's a refrigerator where the faculty store their plums and tarts and whatever they liked to snack on, and recently it's been reported that there have been missing tarts or plums, what have you, and there's suspicion that members of the Harvard Law Review have been pilfering these. He was so serious about it! Well, of course, the mention of tarts makes one think immediately of "Alice in Wonderland," the trial of the Knave of Hearts for stealing the tarts. I don't think I could conceal a smile. He probably thought I was the ringleader of the tart thieves.

I guess the expressions on my face tell what I am thinking. I'm ordinarily polite. But if I get annoyed . . . and sometimes the lawyers arguing their cases, they can be very irritating, they can be very unprepared, or they can be very talkative and go off point and so on. So I do get annoyed; I'm criticized for that. I should control myself, but of course now, it's all academic. I'm not a judge. Too late to correct me.

This interview has been condensed and edited.

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