

A Conversation with Chief Judge Richard W. Roberts

CCE Board Director Michael Hays of Dow Lohnes recently sat down for a one-on-one conversation with CCE Executive Committee member and Public Service Committee Chair, Chief Judge Richard Roberts of the United States District Court.

Michael Hays (MH): Chief Judge Roberts, thank you so much for taking time out of your busy schedule for an interview. Could you tell us a little bit about yourself and what you did before you became a judge?

Chief Judge Roberts (CJR): Well, immediately before I became a judge I was the chief of the Criminal Section of the Civil Rights Division at the Justice Department. That was something of a homecoming for me because when I finished law school, my first job was as a trial attorney in the Civil Rights Division Criminal Section. So, I spent about 4 years there learning the ropes, learning how to try cases.

The portfolio there was one that was very stimulating to me. We investigated and prosecuted racially motivated violent crimes, hate crimes, police brutality cases, involuntary servitude and slavery cases, abortion clinic violence, and church burnings cases. It was a wonderful experience for me and after about 4 years of that I went to Covington and Burling, a firm here in town to get some civil litigation experience because I had concluded around that time that I really wanted to be a litigator. And while I was there long enough to get some civil litigation experience, I realized that I couldn't be away from criminal cases for too long. So as a native New Yorker, I went up to the US Attorney's office for the Southern District of New York, back home from where I am from, and joined that office.

MH: And what year was that?

CJR: I went to the SDNY in 1986. And I stayed there for about three years. As fate would have it, the minute I got up there, I started dating a woman who was down here in Washington whose practice really was Washington, DC focused. She was a telecommunications lawyer who did lots of work before the FCC and was a partner at her law firm here in Washington, Arent Fox. So, somebody had to move. But I had really fallen in love with DC, despite the fact that I am a New Yorker at heart. I moved back down and joined the US Attorney's Office here in DC. After I joined the office here, Eric Holder became the United States Attorney, and I had known him from law school. He asked me to be his principal assistant, which is his second in command. So, I was fortunate to be able to do that.

In 1995, Attorney General Janet Reno asked me to come to the DOJ Criminal Section where I had started out because the chief of the section at that time, Linda Davis, had become a judge here in Superior Court. So that was a bit of a homecoming for me to go back and become the chief of the section where I had begun practicing law. And I did that until coming onto the bench here in 1998.

MH: Were some of the same people still there that had been in the section when you left?

CJR: There were a few of the same people, and it was those real veterans that really allow for the continuity. The information pool tends to get lost when people leave so it was very helpful to go back there but still have some of the veterans there that I had worked with earlier.

MH: Can you describe some of the interesting cases that you have had in New York or in DC?

CJR: I suppose the most interesting case that I had was only my second federal court trial ever. That's not to say that it has been all downhill since then, but it probably underscores, in part, the difference that I tell students about between starting out in private practice versus starting out doing government service. I had started at the department in 1978. By 1980, I did a detail at the US Attorney's Office in DC in the Superior Court misdemeanor trial section to essentially get some trial experience before going full hog into the portfolio of the Civil Rights Division Criminal Section. By 1980, I was assigned to prosecute a man by the name of Joseph Paul Franklin who was indicted for having shot and killed two black men who were jogging with two white women in a city park in Salt Lake City in 1980. It was a heinous, heinous shooting and really did disrupt the normal rhythm and life of the people in Salt Lake City. Fortunately, we were able to convince a jury to convict on the two counts of civil rights violations and the judge sentenced him to two consecutive life terms in prison.

MH: What was the defense in that case?

CJR: Well, I should probably refer you to the defense counsel. A lot of it, frankly, was identity because much of our case was circumstantial. We did not have a single witness that could sit in the witness stand and say, "That man sitting right over there is the man that I saw pull the trigger on that 3060 rifle and shoot the two black men that were jogging with the two white women." We didn't have any such witness. So, our case was built on a powerful amount, but an amount nevertheless, of circumstantial evidence having to do with individuals who could identify this man as having been the man in the Salt Lake City region at the time of the murders, having expressed some very racist views about black and white people mixing, having driven a specific car that was seen leaving the scene of the shooting and his having been in certain locations after the murders. We had evidence of flight as consciousness of guilt, evidence of him attempting to change his physical appearance by dyeing his hair or cutting his hair, and so on. So, we had different chapters of events where we brought in circumstantial evidence. We had probably 70 witnesses that we had to put on and over 100 exhibits. This was only my second federal court trial ever, and I co-tried it with a first assistant US Attorney in Salt Lake City. We teamed up and split up the work fairly evenly. And we fortunately got a conviction.

MH: It sounds like a tough circumstantial evidence case.

CJR: It was a tough case, and it was at a time where the FBI decided to pour a fair amount of investigative resources into it. And I can't say this enough about the FBI, when they decide to get the evidence, they know how to do it and they did it that time.

MH: Did the state refuse to indict?

CJR: We had been in discussions with the state's attorney right after the shooting and encouraging the state's attorney to take the lead in the investigation and charges to be brought. But at the time, there had been a different view about the strength of the evidence and the state's attorney's office did not view the strength of the evidence compiled at that point as strong enough to constitute probable cause before a grand jury to get an indictment. Our view at the time was different. We thought that the clock was still ticking and we still needed to get an arrest warrant out. And we had to do that through indictment. So, we went ahead and presented the evidence to a grand jury in federal court, and they decided there was

enough evidence to indict. We issued an arrest warrant. I'll never forget, when President Carter and candidate Reagan were scheduled to have their presidential debate, that night in October 1980, I was all ready with my bag of popcorn ready to watch the debate which would have been riveting itself. Just before the debate began, there was a newflash across the bottom of the screen saying, "Joseph Paul Franklin arrested for trying to sell his blood in a blood bank in Florida to make some money to live off of." So, I never got to see that debate. I had to put my popcorn aside and packed up because the next thing I'd get was a call saying, "Get out to Salt Lake City." And that's exactly what happened; we had to fly out there and proceed to put the case together.

MH: So, you were living in Salt Lake City for a period time?

CJR: Salt Lake City and I got to know each other a little bit. One of the benefits, however, of co-trying it with lawyers there in the US Attorney's Office was that I got to meet a prosecutor in that office who was also a ski instructor. And he convinced me to let him teach me how to ski. However, I had no interest in trying this case on a broken leg and a crutch. I agreed to let him teach me how to ski after the case was over. And let me tell you, I fell in love with western powder skiing. I got to know Utah more than I thought that I would.

MH: You have just been elevated to Chief Judge of the US District Court for DC. How is being a chief judge different from being a district judge?

CJR: There are responsibilities that the chief judge in this district carries that are different than a line judge. The chief judge is responsible for all of the grand jury matters that arise. If for example, someone is challenging a subpoena, for example a journalist, and the journalist's lawyer files a motion to quash the grand jury subpoena, that motion does not go to a line judge; it goes to the chief judge. For 15 years on the bench, I have never seen a motion to quash a grand jury subpoena because they never came to us. I have to empanel the new grand juries when they come in. I have to entertain requests to be excused from grand jury service. So, I get all of the grand jury matters. The chief judge also gets all of the matters where there is a request to seal. For example, these include requests for people receiving subpoenas to keep them under seal and to direct them not to disclose the existence of a subpoena. Sometimes a service provider---like a Yahoo or Google -- is being subpoenaed for documents, and the government will often ask for documents to be sealed and ask that the person under subpoena be directed not to reveal the existence of the subpoena. So, I get all of the sealing matters. I also get matters that are no longer being handled by judges on the bench, such as criminal matters that come back after being on appeal. Those come to me.

MH: Do such cases come back to you to try or for reassignment?

CJR: In general, in instances where the judge who originally handled the case has retired from the bench, I will generally handle the matter. These include cases coming back from appeal where the Court of Appeals vacated the conviction and remanded it for retrial, or where a defendant is now out on supervised release, and there is a petition from the Probation Office to revoke release on the grounds that the supervisee has violated his or her release conditions. Those matters will come to the chief judge because the sentencing judge is no longer on the bench.

There are a host of other things that I am still learning that come to the chief judge. If a judge to whom a criminal case is assigned has some emergency matter that arises when that judge is away, then that matter does not go to the motion judge, but comes to the chief judge. In civil matters, it goes to the motions judge, but for criminal matters those come to the chief judge.

And I will tell you that I am still learning what some of the responsibilities are as more and more of these things come to me from time to time, and I have to figure out what do I do.

MH: What have been some of the challenges you have had dealing with grand jury issues? It must be a pretty time consuming job I would think dealing with grand jury issues.

CJR: So far, the biggest time commitment has been empaneling two new grand juries at the same time. It meant that we had a larger number of people that had to be summoned. It meant we spent more time actually in court going through the process of entertaining any issues potential grand jurors might want to raise before they are empaneled. Sometimes after they are empaneled, matters might arise---issues of illness or relatives needing to be helped out by the grand juror. So, I will get requests to excuse grand jurors. In the future where we may have investigations being conducted by the US Attorney's Office or by main justice, and statutes of limitation may be running and there had not been compliance with subpoenas for testimony or for documents, those kinds of emergency applications would likely take up good chunks of time because if they are time sensitive matters, I would probably have to stop what I am doing and pour all of my attention into those matters.

MH: How much of the grand jury activity is generated by the US Attorney's Office here? Does main justice use DC grand juries here from time to time?

CJR: Main justice is able to do that. For example, DOJ's Criminal Division Narcotics Section uses our grand juries with cases pending here to indict people. And there are other sections within the criminal division at main justice and other divisions that can certainly use the grand jury. When I was in the Criminal Section Civil Rights Division, we had a couple of matters where we used this grand jury. But numerically speaking, I believe the largest volume of cases that are investigated by grand juries here are principally brought by the US Attorney's Office.

MH: How did you first get involved with the Council for Court Excellence?

CJR: I was actually thinking back about that and I think that I first met June Kress at a reception on the second floor of the Building Museum at an event hosted by an organization--- might have been the Women's Bar Association or another association. There were a number of people mingling. And I got to meet June and we began chatting and she told me about the Council and the programs in which the Council was involved. And I think the next thing that happened was some member of the nominating committee contacted me to see if I would not mind being nominated to join the CCE Board. Now, I might have that wrong. I might have met her before that. But that is the one I remember more vividly because we had a more substantive discussion about the work that the organization does.

MH: We are very grateful for your participation in CCE as its Public Service Committee chair. What keeps you interested in CCE's work?

CJR: Well, it's the interesting things that CCE gets done and the challenging things that need attention. I remember when I first got on the Board and was not yet fully immersed in what CCE was and what it did. There was a very interesting and sort of quirky issue out there about pedestrian safety and how that issue intersected with motorists, cyclists and pedestrians--- and what circumstances we were facing in the District of Columbia. And Dr. Ed Burger self-initiated a project on that issue; it wasn't necessarily a Board initiative, but where there was an interest and where there were resources, so I think the CCE Board and Executive Committee said, "Hey, go with it."

Well, it turned out that the Committee issued a report that was rather well-received with a number of healthy recommendations. And that was sort of my entrée into some of the nuts and bolts work of CCE. Once that project wrapped up, I knew that CCE was also involved with the School Jury Education Program that involved a number of local public schools and charter schools. And that was something that I found quite stimulating. And so the next committee that I signed up with after the Pedestrian Safety Committee was the Public Service Committee. I signed up for a number of the school visits. And I am not sure what June saw in my participation with school visits, but when it was time to get a new chair to chair the committee, she asked me, and it's not that easy to say no and in fact it is more fun to say yes---to keep helping out in that regard.

MH: What are some of the current projects the Public Service Committees is working on?

CJR: We had a really interesting visit from Howard Rosenblum, CEO of the National Association of the Deaf. He is a lawyer and he is deaf. He speaks and can sign. We had a really interesting visit from him about the challenging issues that the deaf and hard of hearing people face in the court system and representation from lawyers. And frankly, it was something that you don't often think about or appreciate all the dimensions of the challenge. I had confronted challenges as a judge when we for example might have potential jurors in wheelchairs, and we don't have wheelchair equipped facilities in this old building. And I heard about how that dimension is broader than just physical handicap and wheelchairs, and also affects people with hearing loss and all the different ways in which that can be a barrier. That meeting really did stimulate a great deal of interest among committee members and the CCE staff. We are going to be growing a project out of that one meeting and looking to find ways that we can try to improve the delivery of legal services throughout our city to those people who are deaf and hard of hearing. When we get opportunities like that to learn about new challenges, it's stimulating.

Another initiative is Girls & the Courts where staff met with folks at a charter school in southeast with an elementary and middle school age population. And they want to get these girls early exposure to the court and legal system and exposure to professionals in it. The intention is that girls can become women lawyers, judges and professionals and that those jobs are something that is within their sights. It's certainly inspiring and exciting.

So, those are some of the things that are percolating up at the moment.

In addition, the Council has had a long standing initiative that has to do with notario fraud--- people who hold themselves out as being able to deliver legal services and will charge potential clients as if they are lawyers but they cannot deliver legal services. This is often in the Latino community where notario has a very different meaning. They will say, "I am a notario", and the potential client will think that this is a lawyer who can help me process my immigration papers or help defend me in a criminal case and so on.

But they are really not licensed attorneys and the person holding themselves out as a notario will charge what lawyers charge and then take the money and run. There was a recent prosecution in Virginia, a successful one. And the Council identified various stakeholders in the region who would have some stake in identifying, investigating, and holding responsible people like that for that kind of activity. And there had never been that type of coalition ---federal, state and local---in the region. And now there is a regular working group among all of those stakeholders to share information that had never been shared before about the nature and scope of the problem and what resources and remedies there are that can be brought to bear about that problem. And that's a Council-initiated activity.

MH: What are some of the issues with respect to the US District Court that you would like to address in the coming year?

CJR: Well, I suppose there are loads of them, but one of the main things that I wanted to say and do was to make sure the word got out that every public servant, be they on the bench or behind the counter is working hard every day to make sure that justice happens in this building. I said that when the gavel was first passed to me as I became chief judge, because I know that sometimes the public has a view that it doesn't make any difference, or you can't get justice, or that people don't care. And I want to make sure that people know in this court that we work hard every day to make sure justice happens.

Some of the particular initiatives that I am paying attention to include our reentry program for our offenders who are being released under supervision. These initiatives are designed to help ensure that they have some type of guidance and resources to help them overcome some of the burdens and hurdles of unemployment and help them to find housing and get skills to make themselves more marketable. I am really excited that our Workforce Development Program in our Probation Office has begun to look at joining forces with American University Washington College of Law that has a clinic that has to do with entrepreneurship. And just two weeks ago a professor came from the Carey School of Law in Baltimore and another professor and they held a seminar, where some of the supervisees and the release offenders came to hear about resources that are available to them if they wanted to try to become entrepreneurs. There is a clinic over there that can help them get 501(c)(3) status and there are resources that they can access when they are trying to get on their feet and want to open let's say a nail salon or a local pet grooming truck or pursue different avenues that would allow them to use entrepreneurial skills. And the reality is that a lot of these drug defendants in this court are ones who have phenomenal entrepreneurial skills---they know branding, distribution---it's just an illegal product. So to be able to connect some of the skills that they have with resources that will allow them to build lawful lives and businesses is very exciting to me.

I have also been very intrigued as I travel the country and talk with different district judges about the different ways in which courts utilize magistrate judges. I want to, at some point down the line, explore ways in which we can be even more productive in our utilization of magistrate judges.

MH: One of the topics that I have heard some judges comment on is the unfortunate revolving door for defendants who have mental health problems. And these defendants are incarcerated for some period of time and then they are released with a mental illness that reoccurs and they wind up back into court again. I am wondering if ---obviously there is a funding issue here --but is there anything that the district court could do about this revolving door situation?

CJR: Well you know, that is a very tricky problem, and it is made even worse when courts have to face such matters as sequestration. One of the really devastating prospects that we faced when the cuts occurred before ---was that the funding for things such as mental health for when people are released --- funding for drug recovery and rehabilitation services---monitoring---a lot of those cuts ---really did expose our community to greater threats. So part of what the Administrative Office of US Courts has been doing and perhaps successfully in some regards is talking as forcefully as they can with Congress about some of the real public safety threats that are faced when you look at sequestration and indiscriminate cuts across the board when it comes to defunding ----because that's one area when there is palpable pain and palpable danger.

We have very good probation offices and officers in this court who have contacts with programs that are providing such services as well some of the recovery services for some of the people who are addicted to substances---but when there is a threat to now cut-off such services given the indiscriminate sequestration--- it makes it very, very difficult. When Congress reached the agreement to extend funding and the continuing resolution until I guess January or February, one hopeful note was that some money was restored to some of these very programs. And I simply hope that some of our efforts through the Administrative Office of US Courts and our discussions with Congress inform the public and Congress about the important need to make sure these types of programs continue to get funded because it is indeed first and foremost a public safety issue but it is also an issue of responsibility that courts and society have to give opportunities to people who need them when they come out ---a chance to fly straight and narrow.

MH: Thank you again so much, Chief Judge Roberts, for this very interesting and informative interview.