

## **Circuit Judge Richard A. Posner: The Poet as Jurist**

A college major in English is seen these days as preparation for few vocations aside from teaching, but Seventh Circuit Judge Richard A. Posner shows that studying literature as an undergraduate is superb grounding for a federal judge.

On the appeals court bench for almost 35 years, Judge Posner is the country's most accomplished writer among federal judges. It's not surprising, given that Judge Posner was an English major at Yale College.

As exemplified by the bankruptcy opinion he penned this week, Judge Posner's decisions are as much poetry as they are prose. They read like poetry because his few words pack enormous meaning. His decisions call on the reader to interpret and read between the lines. He does not pause to explicate every nuance.

His sentences are short, to the point, and easy to read. Perhaps he admired Ernest Hemmingway and rebelled against James Joyce as an undergraduate.

Were he not a jurist, Judge Posner could have been a journalist. Like a well-written news article, his opinions often tell the whole story in the first paragraph and leave no doubt where he's headed. Given his penchant for economics, he could write columns like Paul Krugman.

While he is a devotee of the Chicago school of economics, he takes liberties with *The Chicago Manual of Style*.

Although few have an intellect to match, Judge Posner is the antithesis of stuffy. His language is distinctly American and relaxed. His prose mirrors the more informal style of *The Wall Street Journal*, rather than the strictly grammatical approach of *The New York Times*.

Brevity is Judge Posner's greatest virtue. He abjures excruciatingly detailed recitations of largely irrelevant facts. When it comes to authority, he relies as much on his ineluctable logic as on case law citations. Were he a district judge today angling for appointment to the circuit, he might not score well on objective tests used to measure the quality of opinions, such as copious citations.

The bankruptcy bench and bar owe a debt of gratitude to Judge Posner, because he very evidently goes out of his way not only to sit on the panels, but also to write almost every important bankruptcy opinion coming from the Seventh Circuit. He shows a passion for bankruptcy law seen only in Circuit Judges Carolyn King on the Fifth Circuit and Thomas Ambro on the Third, who both gained their expertise as bankruptcy lawyers before ascending to the bench.

In *Husky v. Ritz*, now *sub judice* in the Supreme Court, the justices will decide whether Judges King or Posner had the correct answer to a dischargeability question under Section 523(a)(2)(A) of the Bankruptcy Code. Judge Posner's 2000 case on that issue derived the result more from logic and notions of equity, where Judge King parsed the language of the statute. With the passing of Justice Antonin Scalia, the upcoming opinion in *Husky* may tell us whether the

Supreme Court in bankruptcy cases is bending more toward equity and less in the direction of complex statutory interpretation.

In *Marrama*, where Justice Scalia dissented, the majority appeared to depart from the mandate of the statute. In *Law v. Siegel*, a unanimous decision by Justice Scalia, the pendulum swung the other direction by invoking the statute and obviating the use of equity. The *Husky* decision will tell us where the Court now stands on equity versus strict construction.

For ABI's discussion of Judge Posner's opinion this week about dischargeability, click here. To read the opinion itself, [click here](#).