



Hon. Sam R. Cummings

Senior U.S. District Judge for the Northern District of Texas

by Fernando M. Bustos



Fernando M. Bustos is the president of Bustos Law Firm, P.C., and a former law clerk to Judge Sam R. Cummings. He is the former chairman of the Court Advisory Committee for the Northern District of Texas, and his practice in Lubbock focuses on commercial and employment litigation. © 2016 Fernando M. Bustos. All rights reserved.

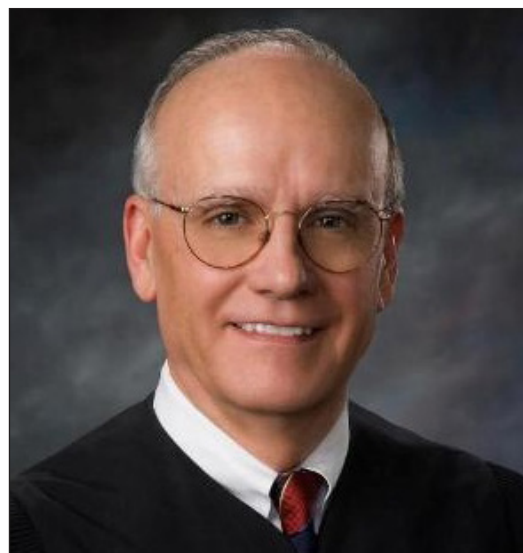
"The jury trial is the best example of a democracy that we've got left in this country. You have 12 citizens come in here and take an oath, who become officers of the court, who then are the ultimate fact-finders of any given case, and that's pretty neat. That is a government of the people, and that's a vestige of government of the people that I think is disappearing on the civil side of the docket."

—Judge Sam R. Cummings

Judge Sam R. Cummings took senior status from the bench on Jan. 1, 2015, after 28 years as a U.S. District Judge for the Northern District of Texas. Judge Cummings is a passionate advocate for justice. Although he has recently taken senior status, his profound sense of duty to the people of his community will continue be a source of inspiration for us all.

Early Influences

Judge Cummings embodies West Texas and the spirit of those who settled this vast land. The people who settled here were resilient and hard-working, quietly enduring the difficulties of life on the frontier with a pleasant grace. Judge Cummings was born in Lubbock, Texas, in 1944 and is the youngest of twin boys. His father worked as an executive at a local supermarket chain and his mother was a homemaker. He fondly recounted his idyllic upbringing in Lubbock where endless summer days were spent playing baseball, riding bikes, and visiting his grandparents on their nearby ranch. His youth was also filled with a great deal of work and responsibility. Judge Cummings' father instilled a strong work ethic in his sons, which included putting them to work at the grocery store nearest their home. However, their father never wanted them to feel entitled, and he let them know they would need to chart their own course for professional success outside the supermarket industry. Working at the store not only provided a small income to the future judge, but also gratitude for a job, an appreciation for the value of work, and respect for doing things the



right way. These timeless lessons would be reinforced throughout his life.

It is obvious to anyone who meets Judge Cummings that he is passionate about Boy Scouting and how it benefits young men. Most Boy Scouts participate in small troops of five to 10 boys that historically lose several members over the years as other priorities crowd out Scouting goals. Judge Cummings was blessed with a determined scoutmaster, Sam Henry, who dreamed of guiding 30 Scouts through the ranks to achieve Eagle Scout, Boy Scouts' highest rank. It was a legendary task even back in 1958, but Judge Cummings' troop did not lose a single member due to inactivity and all 30 earned the rank of Eagle Scout. The scoutmaster's selfless sacrifices inspired Judge Cummings to remain active in Scouting for the last 50 years, blessing the lives of countless generations. Judge Cummings served as a member of the board of the Boy Scouts of America South Plains Council and as committee chairman of Troop 86. He remains active in Scouting because its principles helped him become the man he is today. The principles of Scouting include living a life of honesty, trustworthiness, and a life that makes parents proud. Duty to family and the

community are one of the principle reasons that Judge Cummings became a judge later in life.

Judge Cummings' path to a legal education at Baylor Law School started because of a desire for greater professional fulfillment and because of his future wife. Despite graduating first in his class from Texas Tech University's school of business in 1967, he knew that he needed to continue with his education. During his junior year at Texas Tech, he began to date Sally Cross after he met her in Sunday school. Unfortunately, shortly after starting to date, Sally transferred from Texas Tech and moved to Temple, Texas. Temple also happens to lie about 35 miles south of Waco, where Baylor Law School sits. Judge Cummings struggled mightily with the decision to attend Baylor Law School. After all, he had been offered the opportunity to be part of Texas Tech's inaugural law school class and also had been recruited by The University of Texas. In the end, however, he chose Baylor because it was the oldest law school in the state, had a strong academic track record, he is a devout Baptist (Baylor was founded in 1845 by Baptist pioneers), and because it was closest to his dear Sally. They married shortly after the end of his first year of law school, and Sam Cummings went on to graduate *cum laude* from Baylor Law School in 1970.

Professional Development and the Bench

After graduating from law school, Cummings returned to West Texas to work at Culton, Morgan, Britain & White in Amarillo. Judge Cummings excelled in private practice, becoming a partner after four years. Initially his practice was limited to transactional work for oil and gas firms. It took three years for him to feel confident enough to expand his practice into other areas of the law. He began expanding his practice by assisting other attorneys with their cases and expanding his skills. Ironically, the attorney who first recruited him to the firm, Jess Dickie, also introduced him to litigation, which later became his largest area of practice. Judge Cummings cites how fortunate he was to be mentored by the great litigators at his firm. These experienced attorneys encouraged him to "go next door, knock on the door, and ask for help" when he needed it, and they maintained an open-door policy. Motivated by the quality mentoring that he received as a new attorney, Judge Cummings encourages less experienced attorneys to "seek advice from lawyers who have more experience than you" as the best way to develop legal skills. Judge Cummings stayed in private practice for 17 years, becoming board certified in civil trial law in 1981, a member of the Texas Association of Defense Counsel, and a member of the International Association of Defense Counsel.

Cummings' path to becoming a federal judge happened by chance. Working one Saturday morning he overheard a local radio news program announce that Judge Hal Woodward was taking senior status. With absolutely no thought of becoming a judge before that announcement, he decided it might be a great way to

give back to his community and return to his beloved hometown of Lubbock. After receiving his wife's blessing and encouragement, Judge Cummings spent the next few months talking with several people about how to apply for the vacancy and many months more going through the application process. President Ronald Reagan nominated him to the district court bench on July 31, 1987.

Notable Cases and Influences

Every attorney has mentors or attorneys who made an impact on their life, and judges are not any different. One of the biggest influences on Judge Cummings was Judge Mary Lou Robinson of the Northern District of Texas in Amarillo. Judge Robinson was a pioneer female attorney and judge who made an impact on Judge Cummings through the way she managed her courtroom and the respect she gave to all who entered. Judge Robinson's devotion to the public, desire for fairness, and the soberness that she required of the attorneys provided a model for Judge Cummings, as did her zeal for justice. Judge Cummings has tried to emulate her and to impress on attorneys their responsibilities inside a court of law. The judge's second piece of advice for young lawyers is a reminder that a courtroom "requires your best effort to represent your client and to be candid with the court and work as an officer of the court to see that justice is accomplished in any given case."

Judge Cummings' most memorable case was also his most controversial. *United States v. Emerson* was the first case in which a federal judge held that the Second Amendment is an individual right.¹ The case was initially criticized by some as the work of an activist judge; however, Judge Cummings has always viewed himself as an agenda-neutral judge with the goal of interpreting the law as it exists. He has always strived to exercise judicial restraint and to leave the creation of law to the appellate courts. *Emerson's* core holding was later affirmed by the Fifth Circuit, although they overruled the judgment.² Shortly thereafter, the Supreme Court vindicated his landmark holding in the *Heller* and *McDonald* cases.^{3,4}

One of Judge Cummings' earliest cases yielded great lessons on how to succeed with complex litigation. Early on the bench, he tried a large federal savings and loan fraudulent investment case that had been transferred from Dallas to Lubbock. The case took years of pre-trial motions and seven months of actual trial time, only to end with a hung jury. Judge Cummings observed that perhaps the jury was overwhelmed with the sheer magnitude of the facts and legal theories presented and that the lawyers needed to simplify the case in order to successfully prove their essential elements. For him, it was a reminder to "keep your cases as simple as possible and to not try to cover every little item you can think of in front of a jury, because it can work to your disadvantage." After the first trial, the case was retried in front of another judge with this simplified approach and the case arrived at a jury verdict.

Judicial Profile Writers Wanted



The Federal Lawyer is looking to recruit current law clerks, former law clerks, and other attorneys who would be interested in writing a judicial profile of a federal judicial officer in your jurisdiction. A judicial profile is approximately 1,500–2,000 words and is usually accompanied by a formal portrait and, when possible, personal photographs of the judge. Judicial profiles do not follow a standard formula, but each profile usually addresses personal topics such as the judge's reasons for becoming a lawyer, his/her commitment to justice, how he/she has mentored lawyers and law clerks, etc. If you are interested in writing a judicial profile, we would like to hear from you. Please send an email to Sarah Perlman, managing editor, at tfl@fedbar.org.

Changes to the Court, Transition Away From Jury Trials

Serving as a federal district court judge for 28 years has provided Judge Cummings with a unique opportunity to see how the judicial system has changed. When Judge Cummings first became a judge, he was trying five or six civil jury cases a month, compared to today where he averages three or four civil jury trials a year. Judge Cummings notes that an adequate explanation for the drop is difficult to provide. One of the reasons could be that the federal rules of civil procedure have done their job by requiring parties to discover all of the facts before trial, which increases the likelihood of settlement. On the other hand, because of the federal rules regarding discovery, many clients and their attorneys actively avoid trials because they fear its cost and the perceived arduous time commitments. However, Judge Cummings firmly believes that “the jury trial is the best example of a democracy that we’ve got left in this country.” His invitation to all attorneys is to trust in the “government of the people” again. He has found that nearly all judges and experienced attorneys would help guide an inexperienced attorney through the federal courts if they would simply ask for help.

The Secret to Success as a Judge

For most of his judicial career, Judge Cummings has single-handedly presided over three of the seven divisions of the Northern District of Texas, in Lubbock, Abilene, and San Angelo, covering 47 counties or 47,768 square miles. This territory is perhaps one of the largest in the continental United States for any federal district judge. This jurisdiction is larger than the states of Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont combined. Judge Cummings has two secrets to his success as a judge over such a large geographic area: the first is his staff and the second is the importance of adhering to a firm trial date. Judge Cummings credits all members of his staff as the main reason he can properly serve an area of thousands of square miles. Judge Cummings stays in touch with his former staff and enjoys hearing of their professional and personal success. Recently, Judge Cummings' first law clerk, E. Scott Frost, became a U.S. magistrate judge in Abilene. The second secret to Judge Cummings' success was told to him while attending his first training as a judge. After an entire day of speakers,

the final speech addressed efficient case management strategies. An older judge from the back of the room interrupted and yelled, “I can tell you how to manage a case. Set the case for trial and don’t move off that setting, period.” This simple piece of advice has been instrumental in moving cases efficiently through the docket without requiring Judge Cummings to micromanage the attorneys.

Transition to Senior Status

In transitioning to senior status, Judge Cummings plans on easing the overflowing Dallas docket by taking on a small number of cases from that division as long as he is able and once a replacement for him is confirmed. One pastime he will enjoy even more is spending time with his beloved family. Judge Cummings and his wife, Sally, have two children, David Cummings of San Angelo and Julie Cummings Whitmarsh of Austin, and two granddaughters, Caroline Whitmarsh and Lauren Whitmarsh. His granddaughters' involvement in sports will continue to provide Judge Cummings and Sally an excuse to go and visit them in Austin. In addition to sporting events, Judge Cummings plans on continuing to serve in his church and in Scouting. The citizens of West Texas are grateful for Judge Cummings' devoted years of service and wish him success, happiness, and health as he continues to serve as a senior judge. ☺

Endnotes

¹*United States v. Emerson*, 46 F. Supp. 2d 598 (N.D. Tex. 1999).

²*United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001).

³*District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783 (2008).

⁴*McDonald v. Chicago*, 561 U.S. 742, 130 S. Ct. 3020 (2010).