



Hon. Richard J. Sullivan

Judge, U.S. Court of Appeals for the Second Circuit

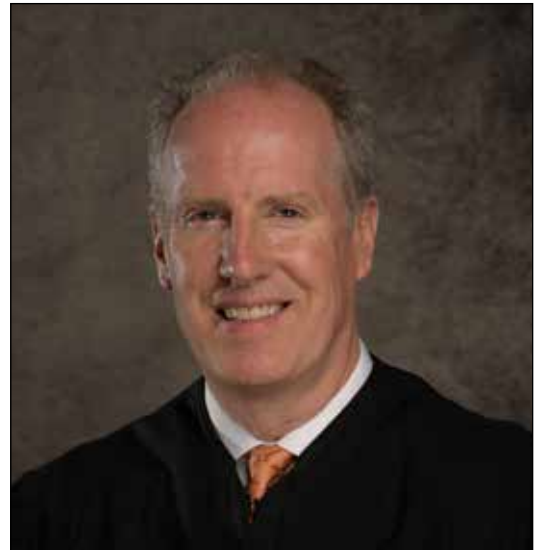
by Phil Schatz



Phil Schatz is a partner at the Manhattan litigation firm Wollmuth Maher & Deutsch LLP. He is a past president of the SDNY Chapter, past circuit vice president of the FBA, and the author of many prior profiles for *The Federal Lawyer*.

Hon. Richard J. (“Rich”) Sullivan of the U.S. Court of Appeals for the Second Circuit “is witheringly funny—a legendary roaster, even by the exalted standards of the Manhattan U.S. Attorney’s office,”¹ says Anirudh Bansal, a Cahill partner and former colleague at the U.S. Attorney’s Office. “He has the quickest wit I ever saw, but humane, and without any mean spirit,” says lifelong friend Eric Dinallo, chair of Debevoise & Plimpton’s insurance regulatory practice. “He’s a real mensch,” says Magistrate Judge Stewart Aaron, a veteran of many bar association musicals, “with perfect comedic timing.” Judge Sullivan’s rendition of “If Lawyers Were More Civil” (sung to the tune of *Fiddler on the Roof*’s “If I Were a Rich Man”) in the New York American Inn of Court’s production of *The Civility Seder*² is legendary and made the cover of the *Wall Street Journal*—albeit as a hook for a polemic against lawyers behaving badly in discovery.³

Everyone has a favorite Rich Sullivan anecdote. Bansal broke up the crowd at Judge Sullivan’s Second Circuit investiture with a story about the judge’s short-lived, self-help tenure as chief of the Criminal Division. Some history: The Office of U.S. Attorney for the Southern District of New York (SDNY) dates back to the founding of the Republic, and its lawyers are the best in the land, later becoming judges, elected officials, attorneys general, cabinet officers, and ambassadors, as well as elite lawyers at elite firms. The Criminal Division is an elite division within the office, and the office of the chief of the Criminal Division is an exalted post within that division, carrying a long and honorable tradition. An array of photographs of current and former chiefs of the Criminal Division dating back to the 1920s lines the lengthy hallway of the 7th floor of the office. By tradition, the chief of the Criminal Division is never absent but is always present. If the actual chief is away, then the next person in seniority assumes the position of chief in their absence, and so on down the line of command. As recounted by Bansal, one lazy Friday in 2005, the sitting chief of the Criminal Division was away for the Memorial Day weekend, as were several others in the succession, making Judge Sullivan the next in line. He



framed a photograph of himself, added the caption “Acting Chief, May 27, 2005, 2:15 PM to 5:15 PM” and hung it on the wall with the rest of the portraits for everyone to see after the holiday. (“I had already given notice that I was leaving July 4, so I figured they wouldn’t fire me,” says Judge Sullivan). “The photograph is still there—one of the treasured artifacts of the office,” says Bansal, “and whenever anyone mentions his three-hour tenure, Sullivan smiles and says, ‘Ah, the golden age of the Criminal Division.’”

From Oyster Bay to Yale

Judge Sullivan grew up in the hamlet of Glen Head, N.Y., near Glen Cove, located in the town of Oyster Bay, an area that has given us rock star Billy Joel, reclusive novelist Thomas Pynchon, and Gambino crime boss John Gotti. He is a Mets fan. “It takes fortitude to be a Mets fan,” sympathizes his colleague on the SDNY bench, P. Kevin Castel. He went to high school at Chaminade, a premier Catholic boys’ school on Long Island, where he excelled in theater, speech, and debate. “Theater was my thing,” he says, “but only because I couldn’t make the basketball or baseball teams and was too bored by cross-country.” He played Sky Masterson in *Guys & Dolls* his senior year. Noted criminal defense lawyer Bob Morvillo, the late found-

er of Morvillo Abramowitz, was in the audience and called him “Sky” from that day forward—even in court. Chaminade led to William & Mary in Williamsburg, Va., the second oldest college in the country, founded in 1693 by King William III and Queen Mary II. One of his classmates was future *Daily Show* host comedian Jon Stewart, who Judge Sullivan remembers as a “terrific athlete” and “very intense in intramural sports.” Judge Sullivan graduated with a degree in government with a minor in English.

Contemplating a Ph.D. in philosophy, Judge Sullivan next served as an NYC Urban Fellow under Police Commissioner Ben Ward and his counsel, Susan Herman, working closely with future Police Commissioner Ray Kelly, and then as a speechwriter for the Virginia Governor’s Office. These jobs made him think about law school. “I realized that anyone who has an interesting job in city or state government had a law degree.” Commissioner Ward, himself a lawyer, wrote a letter of recommendation. “He warned me that law school would brainwash me. I think he was probably right.”

Sullivan chose Yale Law School because of its philosophical and more theoretical approach to law. “I figured at Yale I wouldn’t even have to study law. I could study philosophy and still get a law degree.” His very first class in law school was taught by then-Dean (and now his colleague on the Second Circuit) Guido Calabresi. The next semester, he was taught securities regulation by Judge Ralph Winter. His philosophical bent caused him to create a reading group focusing on legal classics from Blackstone to the present. But he also got a taste of practical lawyering, which proved decisive. In his second year, he served as an intern with the Organized Crime Strike Force in Connecticut under John Durham, a career prosecutor and later U.S. attorney, and Bob Devlin, who later became a state judge in Connecticut. “They were so busy and so generous that they let me and my fellow intern, Michael Schwartz (who later became an AUSA in Philadelphia), stand up in court and do stuff, like taking pleas, arguing motions, and covering sentencings.” He had a revelation: “I realized that I wanted to be a prosecutor. This was the turning point in my career.” This revelation was cemented in his third year as an intern for Judge Jose Cabranes, then the chief judge on the district court in Connecticut and now Judge Sullivan’s colleague on the Second Circuit, whom Judge Sullivan describes as “an incredibly generous mentor, then and still.”

Appellate Law Clerk, Wachtell Boot Camp, and SDNY Prosecutor

After graduation, Judge Sullivan clerked for Hon. David M. Ebel of the U.S. Court of Appeals for the Tenth Circuit, who had been a law clerk to Byron White. “He is a great model for what a judge should be,” says Judge Sullivan.⁴ Judge Ebel returns the compliment: “He is fiercely independent, unequivocally committed to justice, and an enormous legal talent,” adding, “no matter what issue, no matter what side of the issue, I would be pleased if



SDNY General Crimes Unit circa 1994.

I drew him as my judge.” Judge Sullivan’s co-clerk Eric Dinallo says he knew Sullivan was headed for the bench. “I never saw anyone so young work so hard to be principled. He was not satisfied until he was certain he found the right answer.”

Judge Sullivan’s first job after his clerkship was as an associate at Wachtell, Lipton, Rosen & Katz LLP, primarily because it offered an opportunity to work with former AUSAs like Bernie Nussbaum, Larry Pedowitz, and John Savarese. “Wachtell changed my life,” says Judge Sullivan. “It was really like boot camp. They whipped me into shape, and taught me that perfection was expected, always, even at 2:00 or 3:00 in the morning.” That work ethic and attention to detail are things he took with him after he left the firm. In 1994, Judge Sullivan joined the U.S. Attorney’s Office under Mary Jo White, who was his boss for seven years. He excelled at the job, focusing mostly on “blue collar crimes” involving narcotics, racketeering, and violence. After barely four years, White named him chief of the General Crimes Unit and then chief of the Narcotics Unit. Even as a chief, he continued to investigate and prosecute his own cases, including the Maisonet Organization out of Hunts Point and Mario Villanueva Madrid, a Mexican governor who safeguarded ton-quantity shipments of cocaine for the cartels in Colombia and Mexico. In 2002, James Comey succeeded White as U.S. attorney and tapped Judge Sullivan to be chief of the newly created International Narcotics Trafficking Unit and director of the New York/New Jersey Organized Crime Drug Enforcement Task Force. In 2003, he was awarded the City Bar’s Henry L. Stimson Award, given annually “to outstanding Assistant U.S. Attorneys” in the Southern and Eastern Districts in honor of Henry L. Stimson, the U.S. attorney from 1906-1909 and the City Bar president from 1937-1939. The award is an impressive medal of cast bronze. Ever the prankster, Judge Sullivan “wore the medal at the office the next day,” according to Bansal.

Judge Sullivan left the U.S. Attorney’s Office to take a job as deputy general counsel for Litigation at Marsh &

McLennan Companies, Inc., and later as general counsel for Marsh, Inc. “I loved the people and the work was very challenging,” says Judge Sullivan. “And after eleven years at the U.S. Attorney’s Office, it wasn’t bad to be making some decent money in the private sector.” But it didn’t last. One day he got a call from Preet Bharara, a former assistant U.S. attorney (whom Sullivan had supervised in Narcotics) who was then serving as chief counsel to Senator Schumer on the Judiciary Committee, asking, “Have you ever thought about being a judge?”

U.S. District Court Judge for the Southern District of New York

Although it had never occurred to Judge Sullivan, he expressed interest and was appointed by George W. Bush to fill the seat vacated by Judge Michael Mukasey, who had retired the year before. Judge Sullivan was confirmed unanimously in 2007 by a Senate that included Barack Obama, Hillary Clinton, Joe Biden, John McCain, and Bernie Sanders. Two years later, Judge Sullivan had the privilege of swearing in Bharara as the U.S. attorney for the SDNY, where he served until 2017.

On the SDNY bench, Judge Sullivan worked long hours. Bansal says Judge Sullivan is “exacting and meticulous,” and he “expects the same level of diligence and expertise that he demands of himself.” Katie Matsoukas, his first law clerk at the district court, now a partner at the Indianapolis-based Barnes & Thornburg LLP, says “we all worked hard, but no one worked as hard as he did.” Still, she adds, “he always keeps things in perspective and isn’t afraid to laugh at himself.” Matsoukas fondly remembers her hectic first day on the job, within a week of her interview. “We had a big box of files of current cases to review for that day’s conferences, and we just sat down at the table and got to work,” she says. Everyone hit the job running, not least Judge Sullivan, who didn’t yet have a robe and had to borrow one from another judge.⁵

Judge Sullivan “wanted the right result, not the popular one,” says Matsoukas. Despite his background as prosecutor at the Manhattan U.S. Attorney’s Office, one of his first decisions on the bench suppressed incriminating statements due to speedy presentment and Miranda violations.⁶ “He is so proud of our justice system,” says Bansal. “He truly believes that the pen is mightier than the sword,” says Matsoukas, “and he often quoted Washington’s statement (emblazoned on the 60 Centre courthouse) that ‘the true administration of justice is the firmest pillar of good government.’”⁷ “He was our friend,” says Matsoukas, “he had us call him ‘Rich,’⁸ he cared about our families, he remembers our birthdays. He fostered a sense of camaraderie in all of us.” Judge Sullivan gave Matsoukas a pen as a parting gift when her clerkship ended. “I keep it with me all the time,” she says.

Judge Sullivan loved being a district court judge. “I loved the humanity of the job and the opportunity it provided to interact with the many participants in the legal process—lawyers, litigants, court reporters, interpreters, marshals, and especially the jurors.” He says, “I have

great respect for jurors, who unlike life-tenured judges come from the community and serve just temporarily before resuming their lives.” He describes the jury as “the most democratic institution in America” and notes that they are particularly good at finding facts and assessing credibility; “they usually get it right.”⁹ Sullivan is equally fond of his fellow judges, and they of him. Former Chief Judge Loretta A. Preska recalls that Judge Sullivan was a wonderful colleague who was “always generous, and always willing to undertake any task, however onerous.”

Shortly before he took the bench in 2007, former Chief Judge Charles Bricant told him, “If you’re going to be a district court judge, you better like lawyers.” Judge Sullivan does. “At the risk of overgeneralizing, I think lawyers are, on the whole, smarter, funnier, and more interesting than your average bear. And I think they take their responsibilities seriously.” Sullivan spends a lot of time hanging out with lawyers. “He participates in bar activities with enthusiasm and good humor,” says Vince Chang, president of the New York County Lawyers and a partner at Wollmuth Maher & Deutsch LLP, “and stays to the end—sometimes even longer.” “He has been a great supporter of the FBA’s National Outreach Project and our chapter,” says Nancy Morisseau, president of the New York chapter. “He spent an entire morning sharing his experiences with Harlem students who had aged out of the traditional school setting. He personally shook everyone’s hand, and then stayed to join us for a pizza lunch,” she adds. “It was a memorable moment for everyone involved.” Judge Sullivan is on the executive board of the New York American Inn of Court; the Center for Law and Religion at St. John’s University School of Law; an adjunct professor at Columbia Law School, where he teaches sentencing and jurisprudence; and a member and frequent lecturer for the Federalist Society. He is considered a “feeder” judge because many of his clerks have gone on to clerk at the Supreme Court.

Judge for the Second Circuit Court of Appeals

Judge Sullivan was elevated to the Second Circuit in 2017 by a vote of 79-16 upon the recommendation of Senators Schumer and Gillibrand—not quite unanimous (as had been his 2007 approval as a district court judge), but as near unanimity as one can get in these turbulent times. These qualities are what led Tony Ricco, a prominent New York defense lawyer, to write a glowing letter in support of the nomination, noting that every appearance before Judge Sullivan “was a valuable and challenging learning experience,” that Judge Sullivan is “welcoming to attorneys ... defendants and their family members alike,” taking “extra care” to provide a fair proceeding and a reasoned decision.” Although Judge Sullivan kept a large part of his district court docket after moving to the Second Circuit, he is no less enthusiastic about his new responsibilities. “If a trial judge needs to love lawyers, an appellate judge better love the law,” he says, “and I really do.” Judge Sullivan has especially enjoyed the collaborative nature of appellate work. “I have terrific colleagues

who never fail to amaze me with their intellect and commitment to getting it right.”

Endnotes

¹The Manhattan U.S. Attorney’s Office is like *Second City*; everybody there is funny, and the funniest are at a whole other level. Sullivan was at the top of that other level.

²And available on YouTube. See CVIIRecordings, *Bruce Turkle’s 12/12/12 Civility Seder directed by Rita Warner - 2 Camera Edit*, YOUTUBE (Dec. 23, 2012), <https://www.youtube.com/watch?v=O3VlSgrSgWs>.

³Jennifer Smith, *Lawyers Behaving Badly Get a Dressing Down from Civility Cops*, WALL STREET JOURNAL, Jan. 28, 2013. As an aside, because most lawyers are ethical and responsible, most disputes are difficult to police from the bench. “It’s like when kids misbehave in the back of the station wagon,” Sullivan says, “you don’t know who started it, and usually you can’t do much more than tell them to stop it and threaten to turn the car around”—an obviously hollow threat.

⁴Judge Ebel’s April 2012 lecture, “Things I Wish I Had Known When I Was a New Lawyer,” is available online and well worth the listen. OCU School of Law, *Jurist in Residence April 2012: Judge David Ebel – “Things I Wish I Had Known When I Was A New Lawyer,”* VIMEO (Feb. 25, 2013), <https://vimeo.com/60470994>.

⁵The late SDNY judge Harold Baer Jr. had a similar

problem when he was named to the New York Supreme Court. Fortunately, he was assigned to the same chambers as his father and was delighted to find several robes in the closet bearing the initials “H.B.”

⁶*United States v. Pena Ontiveros*, 547 F. Supp. 2d 323 (S.D.N.Y. 2008).

⁷Funny aside about that quote: In the 1930s, John W. Davis of Davis Polk & Wardwell sent his then-associate S. Hazard Gillespie (later a revered DPW partner) to the Library of Congress to confirm his suspicion that Washington actually said “*due* administration of justice.” After a leisurely train ride to Washington and several days at the Hay-Adams hotel, Gillespie confirmed that Davis was right. Nowadays, you can find the actual quote in a few minutes of internet sleuthing.

⁸That tradition didn’t last long, laughs Judge Sullivan. “The clerks were uncomfortable calling me Rich,” he says, “and over time they stopped calling me anything at all.” So later clerks stuck with “Judge.” Judge Ebel had the same experience; Sullivan and Dinallo called him “David,” but later clerks reverted to “Judge.”

⁹Because of the close bond between the trial judge and jury, a lawyer should avoid fighting with the judge.

“Anybody who tangles with a judge in front of a jury is committing malpractice, because juries invariably side with the judge,” advises Judge Sullivan. ☺



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