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## Memorial Tribute to Roger J. Kiley

Thomas L. Shaffer

*Notre Dame Law School*, [thomas.l.shaffer.1@nd.edu](mailto:thomas.l.shaffer.1@nd.edu)

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## MEMORIAL TRIBUTE TO ROGER J. KILEY

The editors and staff of the *Notre Dame Lawyer* pay tribute in this final issue of our fiftieth volume to the late Roger J. Kiley, Circuit Judge of the United States Court of Appeals for the Seventh Circuit. In so doing, we honor him as the model of the Notre Dame lawyer.

Judge Kiley was an All-American end in 1921 under Knute Rockne, whom he served as an assistant coach in 1922. He graduated from this Law School in 1923 and practiced law in Chicago for the following 16 years. In 1940 he was elected judge of the Superior Court of Cook County, and the following year he was appointed to the Appellate Court of Illinois. He held that position until President Kennedy appointed him to the Seventh Circuit in 1961.

Throughout his judicial career Judge Kiley's pervasive concern for the poor, the oppressed, and the nonconformist permeated his opinions.<sup>1</sup> This appears nowhere more clearly than in *Arnold v. Carpenter*,<sup>2</sup> a case involving a school dress code provision regulating the length of students' hair. In holding the provision unconstitutional, Judge Kiley noted:

It is understandable why some judges find students' "long hair" claims constitutionally insubstantial. Measured against today's great constitutional issues (capital punishment, abortion, school segregation) the question of whether a student may or may not have constitutional protection in selection of his hair dress appears *de minimus*. Perhaps even judges who sustain the right are nagged with impatience and doubt when faced with student claims. But we look down across a gap of a generation or two, from the Olympian heights of what we consider great issues. For the high school student claimant, however, the right to wear "long hair" is an issue vital to him and we have seen what he is willing to sacrifice for his claim. It is settled that the students have constitutional rights of freedom and there appears to be no reason why the values of freedom are less precious in a younger generation than in an older. The principle of freedom as the source of our free choices of conduct does not change from generation to generation. Its application on particular facts in student cases is subject to limitation relative to the age, needs and situation of the student and to the reasonable requirements of the common good or state interests. For these reasons it would seem appropriate for the courts to acknowledge the student right as substantial and weigh its exercise in each case with due regard to the freedom and good of the student and to the reasonable needs of the school.<sup>3</sup>

This high regard for justice was tempered by a warm friendliness and self-effacing humor that caused all who knew him to seek and respect his counsel. He was a devoted husband and father; it is fitting that his final opinion<sup>4</sup> testifies to his belief in the family as the basis of a civilized society. There he quoted from William James:

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1 *Nelson v. Heyne*, 491 F.2d 352 (7th Cir. 1974) (extending the eighth amendment's prohibition against cruel and unusual punishment to juveniles in a correctional institute); *United States v. Nordlof*, 440 F.2d 840 (7th Cir. 1971) (reversing the conviction of a conscientious objector); *United States v. School Dist. No. 151*, 404 F.2d 1125 (7th Cir. 1968) (upholding intradistrict modification of school attendance zones).

2 459 F.2d 939 (7th Cir. 1972).

3 *Id.* at 941-42 n.5.

4 *NLRB v. Caravelle Wood Products, Inc.*, 504 F.2d 1181 (7th Cir. 1974).

Our immediate family is a part of ourselves. Our father and mother, our wife and baby, are bone of our bone and flesh of our flesh. When they die, a part of our very selves is gone. If they do anything wrong, it is our shame. If they are insulted, our anger flashes forth as readily as if we stood in their place.<sup>5</sup>

It is for this combination of judicial concern and personal humility that we honor him; these have always been the most respected virtues at Notre Dame. His entire life reflects credit on his alma mater and provides both an example and a challenge to all Notre Dame lawyers.

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I did not know Roger J. Kiley well until he and I were appointed to the United States Court of Appeals for the Seventh Circuit at about the same time. (He was appointed in July 1961; I in October of that year.) Immediately after that we became fast friends, perhaps in part because of our mutual Notre Dame background and also, perhaps, because we shared generally the same philosophical attitude about the function of law in our socioeconomic life. We maintained a close personal relationship from the time we became federal circuit judges until Roger's death in September 1974.

Any attempt to describe accurately another's personality is fraught with difficulty. One must resort initially to depicting the easily recognized characteristics. The nuances and complexities of character that constitute individuality and uniqueness are harder to identify and to work into an overall descriptive mosaic.

One of the outstanding characteristics of Roger Kiley was his utter humility. He was without pretense and hubris. His warm friendly approach in conversation put all who were in his presence at ease. His humility, I suspect, was the basis for the deep compassion he exhibited by word and act. He had a great sympathy for the disadvantaged, the weak, the social outcast, and the lonely nonconformist. He consistently demonstrated a gift of charity for the sensibilities of others—their joys and sorrows, their hopes and fears. A concerned humanism was a guiding principle of his life, both as a judge and as a person. He was, for example, active in the National Conference of Christians and Jews. He truly believed in the brotherhood of man.

The traits I have mentioned impelled him, no doubt, to have a profound concern for social justice and for the rights of the individual threatened by overzealous governmental authority. The concern manifested itself in many of the decisions in which he participated and also in many of the opinions which he authored. Fairness, both from a procedural and substantive standpoint, was his watchword.

Within this warm, self-effacing, humble personality there was a strain of moral authority, courage, and fervent religious conviction that all who knew him sensed and understood. It was a dependable trait as well as a forceful one. It caused many to seek and respect his counsel.

Finally, I would like to pay tribute to his love for literature, the visual arts, poetry, and drama—in short, to his aspirations toward a cultural existence. He was an early collaborator with Mortimer Adler, Robert Hutchins, and others in the formation of the Great Books Foundation. He and Father John J. Cavanaugh, former president of the University of Notre Dame, led a Great Books discussion group at Notre Dame for many years. Judge and Mrs. Kiley were early patrons of *Poetry*, the renowned magazine started in Chicago by Harriet Monroe. He was a

5 *Id.* at 1187 n.21.

staunch supporter and director of the Thomas More Association. His dedication to his family, his church, his university, and his country was complete.

Roger J. Kiley, scholar, athlete, jurist, and citizen, stands as a great credit to his beloved alma mater—Notre Dame.

*Luther M. Swygert, Senior Circuit Judge  
United States Court of Appeals*

Judge Roger J. Kiley's importance to generations of successors who study law at Notre Dame is as a model—as someone to be like.

Notre Dame gave him an honorary degree in 1971; the citation said:

His association with Notre Dame has involved him as a student, a teacher and a trusted advisor. A Rockne-coached All American football player in the early twenties, he served his mentor as assistant coach during the 1922 season. He was graduated from the Notre Dame Law School in 1923, and his relationship with the school has continued over the years as a lecturer and a member of its Advisory Council. His brilliant judicial career spans the past thirty years, twenty of them as a member of the Illinois Appellate Court, and the past decade as a member of the United States Court of Appeals for the Seventh Circuit. His scholarship and insight have earned for him a place among the great judges of our era.

We honored there his life as lawyer, teacher, judge, and leader. Those are the lives our students will lead and those the moral molds we hope their love and their principles will fill. The tributes in this issue, along with the tributes paid to Judge Kiley in his court, sound principally in the quality he had of causing people to want to be like him.

The highest honor a student entering our school can have is the designation "Kiley Scholar." When the Kiley Program (which this year will enroll its twentieth scholar) was created, we spoke of ability, devotion and diversity. Judge Kiley was a judicial giant, a magnanimous and loving Christian, and a lawyer everyone loved. In these important ways, we hold him up to our best; we ask them to be like him. His life was a life to rejoice about, to consult as he lived it and left it to lawyers who will for generations revere him.

His law class at Notre Dame was a judges' class. His classmate John F. Killenny shared the federal appellate bench with Judge Kiley; Donald C. Miller is on the federal bench in Ohio. It honors them, and him, to marvel at the judicial leadership that small class, at this small school, gave America.

He became a lawyer, community leader, and judge in his native Chicago, but continued to teach here and to preside at the founding of the Natural Law Institute. The time and wisdom he offered to education bore on how lawyers should live. And that, too, we hold up to our students. They dare not, on pain of leaving the community worse than they found it, lead merely private moral lives. Too many good people in America cover virtue with bushels which look, from outside, like moral indifference. Notre Dame's model lawyer was willing to point out his principles, to offer them in service to other lawyers. And no one ever did this with better humor, or greater kindness, than Roger Kiley. My friend and schoolmate (and Judge Kiley's law clerk) Bill Harte said, in the Court of Appeals ceremony, that Judge Kiley was fond of Tennyson's line, "I am a part of all I have met." It is our task to see that this great man continues to meet the Notre Dame lawyers who hold now the place he once held in our school and they continue to meet him.

*Thomas L. Shaffer  
Dean of the Notre Dame Law School*



PETER A. R. LARDY