

SECOND CIRCUIT REVIEW

Expert Analysis

Remembering Chief Judge Robert A. Katzmann

We have written our monthly column addressing Second Circuit developments since November 1985, totaling 425 columns. Over the past 36+ years, we have had the privilege of reading more than 15,000 opinions, authored by 45 different Second Circuit Judges (in addition to Judges from other Circuits and District Courts, sitting by designation on the Second Circuit), covering every issue imaginable. We have observed the innovations and priorities of nine different Chief Judges. Perhaps no judge has had a greater salutary impact on more issues within and outside the Second Circuit than former Chief Judge Robert A. Katzmann, who passed away on June 9th. We break from our tradition of covering Second



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Circuit developments this month to discuss the indelible impact Chief Judge Katzmann left on the Second Circuit and the broader community.

President Clinton nominated Judge Katzmann to the Second Circuit on March 8, 1999, to fill the seat vacated by Judge Jon O. Newman. Judge Katzmann served as a Circuit Judge from 1999 to 2012, as Chief Judge from 2013 to 2020, and he assumed senior status in January 2021. During his 22 years on the Second Circuit, Chief Judge Katzmann wrote hundreds of opinions, authored several books, including a seminal work on statutory interpretation, *Judging Statutes*, and launched numerous groundbreaking initiatives, including the Immigrant Justice Corps,

which paired recent law school graduates with unrepresented immigrants facing daunting legal proceedings, and *Justice For All: Courts and the Community*, a circuit-wide civic education initiative, in which judges, court personnel, attorneys and educators collaborate to improve the accessibility, effectiveness and acceptance of public institutions.

Judge Katzmann brought a unique perspective to the courts: He was a Ph.D. political scientist from Harvard with a law degree from Yale, a fellow of the Brookings Institute for nearly 20 years, and a professor of law and public policy at Georgetown for 15 years. Judge Katzmann's nuanced understanding of the political, legislative and judicial actors in our society, how they intersect with one another, and the perspectives they bring to their respective positions infused his judicial approach. Judge Katzmann understood that laws are "expressions by the people's representatives of this nation's aspirations, its challenges, and

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approaches to those challenges.” He wrote, “when judges interpret the words of statutes, they are not simply performing a task; they are maintaining an unspoken covenant with the citizenry on whose trust the authority and vitality of an independent judiciary depend.” Quoting Justice Stephen Breyer, Judge Katzmman acknowledged that narrowly focusing on legislative language, without taking into account the history and context behind its writing and passage, leads a court to “divorce law from life.” Judge Katzmman rejected strict textualism in favor of purposivism. Jesse Wegman, *A Humane Judge, Gone Too Soon*, N.Y. Times (June 11, 2021).

But even as Judge Katzmman emphatically encouraged his fellow judges to seek “all the help [they] can get” through the use of purposivism, Judge Katzmman always maintained an open mind and a healthy respect for opposing viewpoints. Even more important, and in scarce supply these days, Judge Katzmman possessed a grace and humility, recognizing that his colleagues with differing views can help sharpen positions and benefit the practice of law and the judiciary. See, e.g., Robert A. Katzmman, *Response to Judge Kavanaugh’s Review of Judging Statutes*, 129 Harv. L. Rev. F. 388 (June 10, 2016).

Judge Katzmman brought a nuanced, generous approach to judging. He understood viscerally

how his decisions impacted real individuals dealing with real problems. His decisions reflect a level of emotional engagement that is all too rare in judicial opinions. The Judge’s avowedly empathetic approach to judging perhaps can be traced to his family background. He was

the son of a refugee from Nazi Germany and was deeply aware at an early age how destructive it can be for citizens to feel abandoned by the law. Judge Katzmman, whose father was an immigrant, not only appreciated the daunting chal-

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lenges facing immigrants, but he also understood how to level the playing field. Judge Katzmman understood that unrepresented immigrants had only a slight chance of successfully navigating the immigration labyrinth (13%), but that represented immigrants



Chief Judge **Robert A. Katzmman**, left, and Supreme Court Justice **Ruth Bader Ginsburg** at the New York City Bar Association in 2019. In 1993, Judge Katzmman assisted Ruth Bader Ginsburg in her confirmation process. Through this process, the two became close friends.

increased their chances of success by almost 6-fold (74%). Applying his political science background, and his platform as Chief Judge, Judge Katzmman created the Immigrant Justice Corps. Jesse Wegman, *A Humane Judge, Gone Too Soon*, N.Y. Times (June 11, 2021).

In addition to the work Judge Katzmman did to create and support organizations that provide desperately needed representation to immigrants, Judge Katzmman also used his stature as a Second Circuit Judge to address the ineffective assistance that immigrants all too frequently receive from counsel as they navigate the legal system. In *Aris v. Mukasey*, Judge Katzmman wrote that “[t]he importance of quality representation is especially acute to immigrants, a vulnerable population who come to this country searching for a better life, and who often arrive unfamiliar with our language and culture, in

economic deprivation and in fear.” Judge Katzmman’s compassionate understanding of what justice should look like, especially for our most vulnerable populations, led him continually to prod lawyers, legislatures, executives, judges, and institutions to do better.

In 1993, Judge Katzmman assisted Ruth Bader Ginsburg in her confirmation process. Through this process, the two became close friends. Justice Ginsburg would later administer the oath of office when Judge Katzmman became an appellate judge. She described Judge Katzmman as possessing the “personal qualities important to sound judging: an inquiring mind, extraordinary diligence, patience, and a readiness to learn and listen.” *Robert Katzmman, Judge and Civics Advocate, Dies at 68*, United States Courts (June 10, 2021). Justice Ginsburg also could have pointed to Judge Katzmman’s commitment to educate and instill those values in young people. He recognized that an “[u]nderstanding [of] our system of constitutional liberty keeps our democracy strong and safeguards the rights of all Americans.” *Id.* According to his successor, current Chief Judge Debra A. Livingston, it was Judge Katzmman’s vision “that the judiciary might lend a steadying hand to our democracy by helping to educate the citizenry about the rule of law and the role of judges.” *Id.*

Animated by this vision, Judge Katzmman created *Justice For All*, a civic-education center housed in the Second Circuit’s Courthouse in Foley Square. Since its creation in 2018, groups of New York City high school students visit the center to learn about lawyering and judging, with the goal of making the courts more accessible and understandable to the public. When Judge Katzmman conducted moot courts for high school students, many students of color, he would take them back to the robing room, have them put on the judicial robe, and tell them that this could be their future. Judge Katzmman opened up possibilities for so many through his civic-motivated work. Jesse Wegman, *A Humane Judge, Gone Too Soon*, N.Y. Times (June 11, 2021).

Judge Katzmman applied these same principles—fairness, equality, opportunity—to his judicial work. There are so many opinions to choose among in this regard, but one that stands out is *Zarda v. Altitude Express*. In that 2018 case decided by the Second Circuit, sitting en banc, Judge Katzmman, writing for the 10-judge majority, held that Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of sexual orientation. The Supreme Court affirmed that ruling last June in *Bostock v. Clayton County*.

As former Second Circuit Judge Sonia Sotomayor said of Judge Katzmman, “he has an innate sense

of justice, morality and integrity” and was “a visionary who brings out the best in people.” District Judge Jed Rakoff, a very close friend and colleague of Judge Katzmman, stated: “No judge ever took a broader view of the role of a judge in promoting justice in our society, or was more successful in turning those views into practical accomplishment.” Sam Roberts, *Robert Katzmman, U.S. Judge with Reach Beyond the Bench, Dies at 68*, N.Y. Times (June 10, 2021).

Chief Judge Katzmman’s legacy will be measured by more than the hundreds of brilliant opinions he authored for the Circuit over the past 22 years and his extraordinary body of scholarship. His legacy is one of striving for justice, caring deeply about everything he did and every person his work touched. Judge Katzmman made the lives of thousands of ordinary citizens more fair, more just, more equitable. He made our judicial system more accessible. He challenged the status quo, always looking for a better system, a more just path, a level playing field. He set a standard that every judge, and every public servant and private citizen, should aspire to, but will never attain.

It is in Judge Katzmman’s memory that we dedicate this month’s column.