



NEWSLETTER OF THE  
**WESTERN DISTRICT OF WISCONSIN  
BAR ASSOCIATION**

Volume 16, Number 2

April 2007

## **Annual Meeting is Friday, May 4 in Madison; Keynote Speaker is Judge Richard D. Cudahy**



Judge Richard D. Cudahy

The 2007 Annual Meeting of the Western District of Wisconsin Bar Association has been scheduled for Friday, May 4, 2007. The meeting will be held in Madison at the United States District Court House, with a luncheon at the Inn on the Park.

***Morning Business Meeting.*** The annual business meeting of the Association will be held at the U.S. Court House beginning at 10:30 a.m. The meeting will include election of officers for 2007-2008.

***Luncheon Meeting/Keynote Speaker.*** The annual luncheon will be held at the Inn on the Park beginning at 12:00 noon. This year's keynote speaker will be the Honorable Richard D. Cudahy, senior circuit Judge of the United States Court of Appeals for the Seventh Circuit. Judge Cudahy is a former Commissioner and Chairman of the Public Service Commission of Wisconsin, who has served in many public capacities since 1972. He has served on the U.S. Court of Appeals since 1979.

***CLE Program.*** Following the lunch, there will be a CLE program at the U.S. Court House beginning at 1:30 p.m. The CLE program will include discussions relating to discovery, including the new electronic discovery rules, and recent case developments in the Seventh Circuit and U.S. Supreme Court. Brady Williamson will present *Iraq: A Legal Update*. The program will include a report from Theresa M. Owens, Clerk of Court, and will conclude with a question and answer session with some or all of the judges of the Court.

***Court House Reception.*** The day will conclude with a reception at the Court House, which will begin at 4:30 p.m.

Registration forms and a detailed agenda for the annual meeting are included in this newsletter.

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**Western District of Wisconsin  
Bar Association 2006-07**

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**PRESIDENT'S  
COMMENTARY**

By

Jennifer Sloan Lattis  
President

Western District of Wisconsin Bar Association

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I would like to extend a personal invitation to our members to invite you to the annual meeting and luncheon. Among our "missions," the Western District Bar Association was established to promote healthy communication between the bench and the bar. While it is nice to have an organization set up to consider the matters that arise, healthy communication requires that on occasion we meet face to face in a social setting. The annual meeting is our one opportunity to do just that.

From the luncheon to the judges' panel at the end of the CLE session to the reception following, this is our chance to talk both to the judges and to our colleagues in the bar about something other than case work and court procedure.

I look forward to seeing you all at the annual meeting, so please mark your calendars now. Meanwhile, enjoy the spring.

Jennifer Sloan Lattis  
President  
Western District Bar Association

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# Judge Cudahy Has Served on Bench Since 1979

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JUDGE RICHARD D. CUDAHY, a senior circuit Judge of the United States Court of Appeals for the Seventh Circuit, will be the Keynote Speaker for the Western District Bar Association Annual Meeting May 4, 2007.

Judge Cudahy has served on the Seventh Circuit since 1979. Prior to his appointment by President Jimmy Carter, Judge Cudahy was the resident partner in the Washington, D.C. office of the former Chicago firm of Isham, Lincoln and Beale. He received his B.S. degree from the United States Military Academy at West Point and his J.D. from Yale University Law School. He served as law clerk to Charles E. Clark, Chief Judge of the U.S. Court of Appeals, Second Circuit, and in the Office of Legal Advisor, Department of State. He is a member of the Wisconsin, Illinois, District of Columbia, and Connecticut Bars.

From 1961 to 1971 Judge Cudahy served as Chief Executive Officer of Patrick Cudahy, Inc., a meat processing company employing more than 800 people. From 1972 to 1975 he served as Commissioner and Chairman of the Public Service Commission of Wisconsin, where he participated in many important decisions involving the energy crisis, pricing of utility services, environmental issues, nuclear power and other issues. He has been active in government, politics, and civic affairs in his home state of Wisconsin.

Judge Cudahy participated in the proceedings of the ABA's Commission on Professionalism as a representative of its Appellate Judges Conference. He was also a member of the ABA's Special Committee on Energy Law and has served on the

Councils of the Public Utility Law, Administrative Law and Natural Resources Sections. He is a member of the American Law Institute. He has taught or lectured in law at the University of Wisconsin, Marquette University, the George Washington University National Law Center, and DePaul University College of Law. He is the author of numerous scholarly articles.

Judge Cudahy has served as President of the Milwaukee Urban League; as a trustee of the Environmental Defense Fund; as President of the Law Club of Chicago; and from 1990 to 1998 as Chairman of the International Human Rights Law Institute at DePaul University. He is currently a member of the Advisory Committee to the Center for International Human Rights at Northwestern University and a member of the Foundation Advisory Board of the International Aviation Law Institute at DePaul University. He serves on the Visiting Committee of the Divinity School of the University of Chicago.

Judge Cudahy was appointed by Chief Justice Rehnquist to the panel of the U.S. Court of Appeals for the District of Columbia Circuit for the purpose of appointing independent counsels and served four years from 1998-2002. He has received the honorary LL.D. degree from Ripon College, DePaul University, Wabash College and Stetson University. He is also the recipient of the David Peck Award for 1989.

Judge Cudahy is married and has seven children.

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## Western District of Wisconsin Bar Association

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**AGENDA  
ANNUAL MEETING AND  
CONTINUING LEGAL EDUCATION PROGRAM  
THURSDAY, MAY 4, 2007**

10:30 a.m. Annual Business Meeting—United States Courthouse, Room 250

12:00 p.m. Luncheon, Inn on the Park Hotel

Keynote Speaker: Hon. Richard D. Cudahy, U.S. Court of Appeals for the Seventh Circuit

1:30 p.m. Continuing Legal Education Program, United States Courthouse, Room 250

1:30 *Clerk of Courts Report*  
Hon. Theresa M. Owens

1:45 *Iraq: A Legal Update*  
Brady C. Williamson, Jr.

2:05 *Supreme Court Trends & Cases-Civil & Criminal*  
Richard Briles Moriarty  
John W. Vaudreuil

2:35 Break

2:45 *7th Circuit Pet Peeves (Don't Be This Lawyer)*  
Lynn Stathas

3:00 *Federal Rule Changes & E-Discovery*  
Tim Edwards

3:20 *Panel Discussion on Discovery: Practical Problems & Issues*  
Hon. Stephen Crocker, U.S. Magistrate Judge  
James R. Troupis  
Sarah Anne Zylstra

3:50 Break

4:00 p.m. Judges' Panel and Discussion

4:30 p.m. Reception (beverages and hors d'oeuvres)

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**WESTERN DISTRICT OF WISCONSIN BAR ASSOCIATION**  
**Annual Meeting and Continuing Legal Education Program**

Friday, May 4, 2007

**REGISTRATION / RESERVATION FORM**

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Email Address: \_\_\_\_\_

I will be attending:    ~  10:30 a.m. Business Meeting                    ~  1:30 p.m. CLE Program  
                              ~  12:00 p.m. Luncheon                                ~  4:30 p.m. Reception

Luncheon Menu Selection (\$20.00 includes tax & gratuity)

- ~ Beef Stroganoff
- ~ Chicken Caesar Salad
- ~ Vegetarian Lasagna

Please enclose a check to the Western District Bar Association to cover the following expenses:

Lunch (\$20.00) \_\_\_\_\_

Membership dues for 2007 - 2008 (\$35) \_\_\_\_\_

Cost of CLE Program (\$35 for non-members; Free for members) \_\_\_\_\_

TOTAL: \_\_\_\_\_

Please return this form with your check by April 27, 2007 to:

Western District Bar Association  
Post Office Box 44578  
Madison, WI 53744-4578

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# The Judicial Truth About Cats and Dogs

By Andrew Clarkowski and Sarah A. Zylstra

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Perhaps you, like the co-authors of this article, have agreed from time to time to write an article on a legal topic of interest. And when the deadline approaches, you have been struck by a lack of good topics or, alternatively, by the fact that the world likely does not need another article on a topic of interest only to lawyers who happen to have a case pending on that very subject, in which case they should be researching the issue rather than browsing bar newsletters hoping someone else will have done their research for them. So you decide that it might be nice to write a fun, human interest piece. Of course, when the time comes to write the article, you immediately bemoan your decision, thinking why didn't you just agree to write an article on something easy, like removal?

Lo and behold, an article about the judiciary's love of cats and dogs is born. We think that we are immensely qualified to write this article. Sarah, in fact, has a cat, and Andrew has heard of dogs. In our haphazard research of the purely anecdotal variety, we have learned that the judiciary's penchant for four-legged friends has led to some amusing opinions.

No article about cats and the law could be complete without reference to *Miles v. City Council of Augusta*, 710 F.2d 1542 (11th Cir. 1983), "The Talking Cat Case." The cat at issue was Blackie. Blackie's owner clearly had too much time on his hands. We know this because: (1) he had apparently, through extensive efforts, taught his cat to make sounds resembling human speech (for those of us who were around in the Seventies, this cat even appeared on *That's Incredible*); and (2) when, after the owner and Blackie apparently fell on harder times, and the city of Augusta demanded that the owner pay \$50 for a business license because he was soliciting contributions from passersby on the street to hear Blackie talk, the owner pursued a lawsuit that worked its way

to the Eleventh Circuit. The owner raised several challenges to the business license ordinance, including that it was vague because, although it extensively listed the types of businesses that might be subject to the ordinance, it did not contain a category for speaking animals. *Id.* at 1543. In addition, the owner argued that the ordinance was an impermissible restriction on free speech. *Id.* The Eleventh Circuit wrote a *per curiam* opinion summarily rejecting the vagueness argument on the grounds that the commercial solicitation of funds for performance clearly fell within the general definition of "business" under the ordinance. *Id.* at 1544. As to the free-speech argument, the court cleverly saw that it need not address such an argument: aside from the fact that animals are not persons subject to the Bill of Rights, the court saw "no need for appellants to assert [Blackie's] right *ius tertii*," because, after all, "Blackie can clearly speak for himself." *Id.* at 1544 n.5. Don't believe us? Look it up.

Dogs have had their own time-honored place in the law. Oliver Wendell Holmes, Jr., in his classic work *The Common Law*, noted while discussing the fundamental issue of intent that "even a dog distinguishes between being stumbled over and being kicked." (Was he trying to distinguish dogs from lawyers?) More recently, the Wisconsin Court of Appeals was asked to determine in *Gasper v. Parbs*, 2001 WI App 259, 249 Wis. 2d 106, 637 N.W.2d 399, whether a dog owner's knowledge that a dog, as a puppy, had chewed on furniture and Tupperware would be sufficient to demonstrate that the owner had knowledge that the dog was likely to injure a person, for purposes of doubling damages under Wisconsin's dog bite statute, Wis. Stat. § 174.02(1)(b). The court concluded that imputing such knowledge would impermissibly broaden the scope of the statute, because "all puppies chew on various items they encounter, including shoes, toys, bones, newspa-

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pers, plastic containers, and furniture.” *Id.* at 112. One suspects that Judge Lundsten, who wrote the opinion, was speaking from personal knowledge, given that he provided such an extensive listing.

Another appellate judge, Richard Posner of the Court of Appeals for the Seventh Circuit, known for his barbed witticisms that can leave a litigator feeling battered and bruised, has a little known feline fetish. Search cases for Judge Posner’s name and a few versions of the word “cat,” and you will find more than 55 opinions in which Judge Posner has woven his feline companions into his opinions. (For the few over-achieving souls who actually insist on seeing for themselves, our Lexis search was opinion by (Posner) and (cat or cats or feline! or kitty or kitten!).) More than a half dozen times, Judge Posner has relied on the old standby cliches of playing a cat and mouse game, letting the cat out of the bag, and mice playing while the cat’s away. He also has used double entendres to pay homage to his feline friends, such as referring on several occasions to money that remained “in the kitty.”

One has to wonder, however, whether Judge Posner’s love of all things feline is really a love-hate relationship. In the 1980s, he wrote three opinions in which he stated that there was more than one way “to skin a cat.” Did his beloved cat, Dinah (whose picture appeared with him in the December 10, 2001, issue of *The New Yorker*), press upon him the hurtfulness of the skinning-the-cat references? Perhaps, because Judge Posner has not used that phrase again since 1989. He did, however, use the equally hurtful phrase “another kick at the cat” once in 2004, but he used it in a dissent, and he appeared to be rather angry at the majority.

Still, Judge Posner’s recent opinions lack the kitty flare that marked some of his earlier opinions. Our favorite from 1992 references an FCC opinion that Judge Posner determined was less than satisfactory: “Stripped of verbiage, the opinion, like a Persian cat with its fur shaved, is alarmingly pale and thin.” *Schurz Communications, Inc. v. F.C.C.*, 982 F.2d 1043, 1050 (7th Cir. 1992). Dinah might not have liked this reference

either; as word has it, she is a Persian.

In his more recent opinions, Judge Posner has been surprisingly repetitive and unoriginal in his feline references. In 23 of his opinions in which he mentions his feline compatriots, Judge Posner simply has relied on the metaphor the “cat’s paw” in showing his devotion to the feline species. For those non-animal types or those who simply do not like metaphors, “cat’s paw” typically describes a person used or controlled by others as in dupe, instrument, pawn, puppet, stooge, or tool. (“Cat’s paw” also has a couple of nautical meanings, such as a light ripple on a calm sea or a loop formed in a line or rope for attaching a hook.)

According to a quick unverified search on Google (it was on the internet so it must be true), “cat’s paw” (as in dupe) has its origins in an old folk tale. Although cats are portrayed in folklore as clever and sophisticated, the story behind “cat’s paw” is an exception to the rule, and not one that any self-respecting cat would admit to being true. An ancient fable tells the story of a monkey who came upon some chestnuts roasting in a fire. The clever monkey managed to convince a cat to reach his paw into the flames and fetch the chestnuts. The monkey got his chestnuts, the cat had a sore paw, and a metaphor for “chump” was born. While the original “cat’s paw” describes someone who is tricked into doing something dangerous or foolish on behalf of someone else, the term has broadened somewhat over the years. Judge Posner often has used it to mean alter ego, as in “Andrew is Sarah’s cat’s paw of this joint article”- or wait . . . no, Sarah’s is the cat’s paw-well, we are convinced that one of us is, but we are not sure which one.

In any event, we hope you have enjoyed our trip to the judicial doghouse. (Although cats have played a more prominent role in this article, “cathouse” just doesn’t seem like the right word to use in conjunction with our esteemed judiciary.) We have a sneaking suspicion that in our next article, we will be citing the removal statute.



Western District Bar Association  
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Madison, WI 53744-4578

Address Service Requested

### MISSION STATEMENT

It is the mission of the Western District of Wisconsin Bar Association to promote the just, speedy, respectful and efficient determination of every action filed in the District Court: by acting as an effective liaison among the District Court, federal practitioners, litigants and the public; by encouraging, fostering