2007

Howard T. Markey

Sherman L. Cohn
Georgetown University Law Center, cohn@law.georgetown.edu

This paper can be downloaded free of charge from:
https://scholarship.law.georgetown.edu/facpub/1706

1 J. Fed. Cir. Hist. Soc'y 7-12

This open-access article is brought to you by the Georgetown Law Library. Posted with permission of the author. Follow this and additional works at: https://scholarship.law.georgetown.edu/facpub

Part of the Judges Commons, and the Legal Education Commons
I. **HOWARD T. MARKEY**

By Sherman L. Cohn, Professor of Law
Georgetown University Law Center

Chief Judge, jet test pilot and Air Force General, lead partner in a highly-respected law firm, law teacher, law dean and sought-after lecturer, Howard T. Markey packed into a single life four distinguished careers, any one of which would merit biographical attention. His early years, however, did not show the promise of what later occurred – or perhaps it did.

Howard Markey was born November 10, 1920, in Chicago, the son of Thomas Markey, a railroad telegrapher, who worked nights, and Marie Dryden, who worked days, writing a column of vaudeville critiques and gossip. Thomas Markey made his own beer, capping his own bottles, which had a habit of popping open at the most embarrassing moments. Marie made many friends in the vaudeville world who frequented the Markey home, including the famed Sophie Tucker.

Howard Markey was driving at age 9 (no driver’s license required in those days) and began smoking at age 11, a lifelong addiction. From age 12 to 14, he sold ice cream door to door, and with his Irish charm became the most successful salesman of his company. At age 14, he was made associate manager of the Cock Robin Ice Cream Stand. He stood out in primary school, so that the nuns arranged for him to attend St. Phillips Academy on a full scholarship. In high school he was captain of both the football and basketball teams in each of his junior and senior years.

In third grade, at age 10, he told his best friend that he was going to marry a classmate, Elizabeth Pelletier. Eleven years later, he did. Meanwhile, he was obsessed with motorcycles which he made out of Model A and Model T parts. He would make one, use it, sell it, and make another. All of which was dedicated to following the name bands of the day (Artie Shaw, Benny Goodman, Glenn Miller, etc.) through the Midwest, with Elizabeth on the back of the motorcycle. Quite often her dress caught fire from the exhaust, so she always carried an extra slip – all to go “dancing with Howie.”

There was no thought of college, as the family had no money. He worked at Commonwealth Edison Company, testing and loading refriger-
ers. Immediately after Pearl Harbor, he enlisted in the Army Air Corps; three days later, he departed for Williams Field in Phoenix, Arizona, for flight training. On his first five flights, Howard got air sick and turned green. He then decided to "remove the evidence" by not eating. He passed flight training and, the next day, he married his childhood sweetheart. Howard and Beth knew that the day after the wedding he would receive his orders and in the crisis of 1942 could expect to ship out that same day to any of the war fronts. However, he was ordered to Wright-Patterson Base in Dayton, Ohio, to train others, which he did throughout World War II. Supposedly, he still holds the record of the number of hours flying the P-38 Lightning, his favorite aircraft. He was also a test pilot for new planes being tried out by the Air Corps.

Howard had his first introduction to jet propulsion while at Wright-Patterson. The jet aircraft had been invented but was still very much experimental. There was a struggle between two generals, one of whom commanded Wright-Patterson, as to where the new jet force would be based. One day, Howard saw a plane under wraps and guarded by two armed sergeants. Howard went to the library and read up on this new technology. He then went out to the field with a group of his men some of whom distracted the two sentinels. Howard then took off the wraps, jumped into the jet, and roared away. His general could then claim that he had a jet pilot who was, in fact, flying the plane. That won the day for Wright-Patterson to become the base for the new jet force, and Howard became the principal jet pilot.

After the war ended, Howard continued flying, this time solely as a test pilot of the prototypes of the newly developed jet, flying in Alaska, chosen because of its secrecy and inaccessibil-
ity. He was on fire at least five times and lost his wings at least twice. He became quite proficient at bringing in wounded planes, crash landings, and bailing out at the last second. Most of his co-test pilots did not survive.

Then came the Korean War. He was ordered to Korea in early July 1950, but somehow arranged an extension of time so he could be with his wife, Beth, for the birth of their son, Christopher, at the end of the month. Four hours after the birth, Howard was on his way. In Korea, he was, for 22 months, Air Operations Officer for the Korean Airlift, receiving many medals including the Distinguished Flying Cross, the Bronze Star, the Purple Heart with Oak Leaf Cluster, the Ulchi Medal (South Korea), eleven service medals, and the Soldiers Medal (Heroism), for saving the lives of comrades at complete risk of his own.

Before the Korean War, Howard Markey also gave speeches about jet propulsion and rocketry, including to civic groups. After one such speech to a Rotary Club, he was approached by Leslie Parker, senior partner in a leading Chicago patent law firm. Parker was impressed with how Howard could explain a difficult, technical subject so that lay persons could understand. Seeing Howard’s potential before a jury, Parker offered to pay half of Howard’s tuition for undergraduate and law school and offered him a three year contract with his law firm at the then princely sum of $5,800 a year. The next day, Howard enrolled in a special program at Loyola University for returning veterans, going days, nights, summers; he completed undergraduate plus law studies in three and one-half years, graduating *cum laude* and serving as editor-in-chief of the law review.

In 1949, he passed the bar examination and joined Parker & Carter. That next year, while working full time, he also studied for a masters in patent law at John Marshall Law School in Chicago, which was awarded to him in 1950. Parker and Carter soon became Parker, Carter & Markey, and then Markey, Plyer, Dorn & McKechran. Howard also joined the Illinois Air National Guard, continuing his military career.

Howard Markey excelled in both the practice of law and running a highly successful law firm. He also excelled in the military, becoming, at age 38, the youngest brigadier general ever commissioned. From 1954 to 1970, he commanded an Air National Guard Wing. For the next six years, he was deputy commander for the Reserves, Tactical Air Command, achieving the rank of major general in 1973. He qualified in virtually every aircraft of his era. In 1974, he received the Man of the Year Award from the Air Force Association.

Howard also became involved in Republican politics. There was some pressure on him to run for the United States Senate against Paul Douglas. Once Howard met Charles Percy, and saw how he worked a room, however, Howard pulled his name out of the race. But in the process, he impressed Senator Everett Dirksen, who was a significant power in the Senate in the early 1970s. Senator Dirksen was then instrumental in encouraging President Nixon to nominate Howard Markey to his first judicial appointment to the Court of Customs and Patent Appeals. That court was terribly backlogged with cases taking three years to be decided, reputedly the most inefficient federal appeals court in the country. Moreover, the decisions of the court were reputed to be inconsistent to the point of incoherency. Clearly a strong manager was called for.

On May 3, 1972, President Nixon nominated Howard T. Markey to be the Chief Judge of the U.S. Court of Customs and Patent Appeals. He was confirmed on June 21st, and formally invested a month later by Chief Justice Warren E. Burger. During the ensuing decade, the court’s backlog was brought up to date, to the point that it took only seven months from filing to decision. Moreover, there emerged a coherent doctrine of law in well-written opinions. The court came to the attention of both bench and bar far removed from its specialized subject area.

A decade after Judge Markey was appointed to the CCPA, the Federal Courts Improvement Act of 1982 created the U.S. Court of Appeals for the Federal Circuit, combining the appellate functions of the CCPA and of the U.S. Court of Claims. By the specific terms of that Act, Howard T. Markey became Chief Judge of the new court, a position that he held until 1990.
In the words of the Judicial Conference of the United States, Chief Judge Markey was “a giant of the federal judiciary, not only leading the CCPA and the Federal Circuit, but also guiding the governance of the entire Third Branch.” Judge Markey had a tremendous influence on the development of the law before the courts of which he was Chief. He sat more often than any other active judge on those courts. In addition, he sat extensively on other courts; he is reported to be the only judge to have sat on all thirteen federal circuit courts of appeals. For his own courts, Judge Markey wrote more than 800 opinions and heard over 5,000 appeals. As the Judicial Conference stated, “for two decades, he wrote most of the landmark patent decisions.” For the various regional circuits, he authored another 250 opinions and heard over 1,400 cases. Judge Markey also found time to deliver innumerable speeches all over the United States and published articles on patent law and various aspects of judging in 57 law reviews.

Judge Markey also became known for his effectiveness as a judicial administrator. He was proud of the fact that the CCPA caught up on its significant backlog and that both courts of which he was chief thereafter remained current. He was also proud of the fact that, every year he was chief judge, the court returned some of its appropriated funds to the United States Treasury. As the United States Judicial Conference stated: Chief Judge Markey “lived out the motto posted in his Chambers which read, ‘The best possible decision, in the shortest possible time, at the least possible cost.’”

Chief Judge Markey was the senior member of the United States Judicial Conference, serving from 1972 to 1990, chairing the conference in the absence of the Chief Justice of the Supreme Court. He also chaired the Conference committee now known as the Committee on Codes of Conduct, writing many of the leading opinions construing and applying the ethical canons applicable to federal judicial officers. Under Chief Judge Markey, that committee for the first time became a real force within the federal judiciary. Judge Markey served as Chair of the Science Advisory Committee of the Federal Judiciary Center, the Chair of the Circuit Chief Judges Conference, the Chair of the International Appellate Judges Conference, and the chair of the Committee on the Bicentennial of the Constitution. He was a member of the Conference’s Executive Committee, served on the Committee on Court Administration and was a member of and liaison with a score of other committees, task forces, and conferences. Chief Justice Burger found in Chief Judge Markey that wonderful person who, no matter how busy he was, could be depended upon to do well in still another important task.

Judge Markey was also active outside the courts. He was founder of the Thomas More Society of America, chair and vice chair for the Federal Judiciary in the annual campaign of the United Way for the National Capital Area, member of the board of the Supreme Court Historical Society, national president and chair of the board of the Air Force Association, a fellow of both the American Law Institute and the American Judicature Society, and a member of various bar associations.

One of his proudest achievements, and the one in which the author worked closely with him, concerned the American Inns of Court, which is dedicated to the improvement of skill, ethics, civility, and professionalism among lawyers and judges. Judge Markey was co-founder and first president of the Charles Fahy American Inn, which was the fifth in the nation to be organized. He served on the Ad Hoc Committee of the United States Judicial Conference, appointed by Chief Justice Burger to report to the Conference on whether the American Inn concept was of value to the administration of justice, if so, whether there should be a national structure, and, if so, to propose such a structure. On the Ad Hoc Committee, Judge Markey was quite instrumental, personally authoring many of the basic documents. He became the second chair of the Board of Trustees of the new national American Inns of Court organization. In that capacity, he gave much time and energy to moving the concept forward. He used his contacts among judges and lawyers throughout the country to encourage the creation of new American Inns, and his wise counsel to guide the Board of Trustees. Under his leadership, the number of American
Inns grew to 204. The Inns, located throughout the land, became the foundation for significant growth, which occurred in subsequent years.

Judge Markey often spoke eloquently of his vision for the American Inns of Court. This vision was summed up in a speech in 1991:

[W]e are engaging in a “quiet crusade” – a crusade literally to save our profession, or as much of it as we can. In doing so, we thereby also serve the administration of justice – the very heartbeat of a free society. I harbor a fervent, fevered hope, and an unquenchable belief, that when the American Inns of Court have reached their full potential, there will be accepted throughout our society another unchallenged accolade. I believe the day will come when our total society will accept as a given and use daily as a measure, the phrase, “ethical as a lawyer.”

In 1990, Judge Markey stepped down from the chief judgeship of the Federal Circuit. The following year he resigned from the court to become the Dean of the John Marshall Law School in Chicago. For years, he had been teaching classes at George Washington University and at Loyola University in Chicago. So, becoming Dean was carrying on still another career.

By this time, however, back trouble, with which he had been plagued for years, became worse. He underwent an operation, which, if anything, increased his pain and gradually left him unable to walk. The death of his beloved Beth was a significant blow from which he never fully recovered. Through the use of his national and highly respected name and many contacts, Dean Markey contributed to a significant move forward by John Marshall, but his disabilities made it impossible for him to continue beyond his initial three-year appointment.

Through the years, Judge, General, Dean, and lawyer Howard T. Markey received many awards, including seven honorary doctorate of laws degrees. To mention only a few, he received the George Washington Honor Medal, Freedoms Foundation; Citation of Merit, John Marshall Law School; Medal of Excellence, Loyola University; Old Master Certificate, Purdue University; Herbert Harley Award, American Judicature Society; the Thomas More Award; and the Sherman A. Christianson Award, American Inns of Court. Perhaps most meaningful was the renaming of the National Courts Building as the “Howard T. Markey National Courts Building” in 1998, upon an Act of Congress which, among other things, waived the usual congressional rule that buildings not be named for living persons.

No biographical sketch of Howard T. Markey would be complete without recognizing the essential role played by his wife, Elizabeth, or “Beth” as she was called by all who knew her. Beth was Howard’s constant support and more. In all his activities, Howard was little at home. It was Beth’s role, which she carried out without complaint, to maintain the home and raise the children, almost single-handedly, and be a gracious hostess, as well as an emotional and physical support to Howard and all he did.

Beth and Howard had a spiritual bond. One of their sons relates how, on two occasions, while Howard was flying solo, Beth woke her son in the middle of the night to join her in fervent prayer. Without a phone call, she knew that he was in trouble. In their son’s words: “Mom and I were on our knees, elbows on the bed and hands together around our rosaries. She was shaking, she was praying so hard.” She knew that her Howard was in trouble, and each time she was right. He was out of gas and far from an airfield. Somehow, bone dry, he was guided to a place to land safely.

In addition to being devoted mother and wife, Beth had a life of her own. She grew up in a strongly Catholic household attending mass seven days a week. But her religious training went further. Her father, a railroad locomotive driver, had a job through the Great Depression, when many around them did not. Throughout her school years Beth helped her mother three to four days a week to make soup and bake bread which they then delivered to various families identified by their pastor as being in need.

Beth carried forth this tradition into adulthood. She became active in The Daughters of St. Francis de Sales. This is an organization of women, usually married or widowed, who devote time
in the service of others, ministering to the sick, consoling the bereaved, counseling those with marital difficulties, and the like. Her involvement led to her appointment as one of the two prioresses, directing and inspiring the Daughters in the eastern half of the United States. When Beth and Howard left the Washington, D.C. area in 1991 to return to Chicago, the Daughters had a grand dinner in her honor.

At the end of 1993, Beth and Howard were in separate beds in the same Intensive Care Unit in a Chicago hospital. Beth died soon after the New Year. From that point on, Howard perceptively began to slow down and withdraw from activity after activity. When one of his sons confronted him, trying to encourage him to stay involved in life, Howard responded: “All of my life, everything I ever did, I did to make her proud of me and now that she’s gone, there’s no more reason to do anything.” At the dinner upon the occasion of his retirement from the Court of Appeals, Howard sang a tribute to Beth, as being “the wind beneath his wings.” With her death, Howard had no further interest in flying.

Howard T. Markey died on May 3, 2006, and was laid to rest in Arlington National Cemetery. He is survived by three children: Jeffrey, Christopher, and Jennifer.