

Opening Argument - Lloyd Cutler: The Last Superlawyer

BY STUART TAYLOR JR

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There will never be another superlawyer on the scale of Lloyd Cutler, who died on May 8 at age 87. This is not to deny the possibility that someone, somewhere may replicate the dazzling array of talents that made Cutler the pre-eminent lawyer-statesman of his generation: intellectual brilliance, wisdom, public-spiritedness, eloquence, genius for grasping the interests of everyone around the table, and passion for forging consensus solutions to hard problems.

But even if more such people walk among us, the political and legal environments that enabled Cutler to be Cutler no longer exist.

This is a man who served every Democratic president since LBJ and every Republican president since Ronald Reagan; who won the trust and friendship of the best and brightest leaders in both major parties; who represented corporate titans and civil-rights groups; who moved effortlessly between private and public sectors; who tackled national problems as diverse as the race riots of the 1960s, the Iranian hostage crisis, the vast, unsecured nuclear stockpiles in Russia, and faulty intelligence on weapons in Iraq.

The snarling partisanship, pervasive mistrust, intellectual shallowness, and TV-driven demagoguery that permeate today's Washington would make it all but impossible for a Lloyd Cutler to work his magic now. He was in his element when steering small groups of serious, moderate-spirited leaders who wanted to make the system work, and who were moved not by flash or fiery rhetoric or poll numbers, but by intellectual rigor. Such leaders have become an endangered species.

Meanwhile, the legal profession has become so specialized, and so driven by lust for profit, that today's legal giants can hardly match Cutler's range: Representing big companies (for big bucks) and the NAACP (for free), before Supreme Court justices who saw him as a peer. Lobbying Congress in a serious and substantive style that now is overshadowed by campaign cash. Effectively defending corporate clients caught on the wrong side of the law. Cajoling big-ego CEOs into complying with laws they didn't like. Working out complex deals with Iranian mullahs as well as global conglomerates. Encouraging his firm to devote serious time and talent to unpaid public-interest work.

The uglification of our political discourse was a problem that even Cutler couldn't solve. I never saw this man of rare equanimity so close to dejection as he was on a September day in 1987, outside a big Senate hearing room. Cutler's fellow Democrats and champions of liberal causes were mounting an unprecedented political assault on his friend Robert Bork, whose Supreme Court nomination Cutler strongly supported.

There were serious and scholarly critiques of Bork's brand of conservatism, which Cutler contested on the merits. But in the center ring, Senate Democrats and liberal groups were demonizing Bork as a monster who was driven by hostility to racial minorities and civil liberties. Amid an unprecedented barrage of attack ads, Bork was sinking in the polls.

"We are getting perilously close," Cutler lamented, "to electing a Supreme Court justice." In this holiest of all constitutional rituals, as he saw it, passion was eclipsing reason. Mass appeals and distortions were trumping informed judgment. And a nominee of integrity and distinction was on his way to defeat.

By March 1994, when a Whitewater-embattled President Clinton persuaded the 76-year-old Cutler to become his (temporary, unpaid) White House counsel, it was not the same Washington as when Cutler had become counsel to President Carter 15 years before.

"In those days," Cutler later told a legal magazine, "it was a much better job than it is today because it was a policy-making job. I didn't have to spend all my time defending the president and his team from personal attacks.... [These days,] if you don't have your position ready by 4 o'clock, the correspondents will be standing on the White House lawn ... saying, 'The White House is in disarray.' "

This daunting trend did not stop Cutler from accepting major assignments after leaving the White House, from both Clinton and George W. Bush. Indeed, since the 1960s, he has had a piece of just about every big issue to come along. At least, so it seemed to this onetime cub lawyer in Cutler's firm, as sketched in a 1994 Legal Times column. Slightly revised excerpts follow:

In 1977, when I was starting out at Wilmer, Cutler & Pickering, one of my first assignments was to write a memo for Lloyd Cutler. It involved fish. North Atlantic fish, to be precise. Canada wanted them. The United States wanted them, too. Two countries can't catch the same fish. What's a president to do?

Call in Lloyd Cutler, of course, to work out a deal with Canada. We take these fish, you take those fish, that sort of thing. The president calls Cutler. Cutler calls me -- or, rather, calls the FNAMEWP (Fungible New Associate Memo-Writing Pool).

One-on-one meeting with The Man. Deep throaty voice, carefully chosen words, measured pace, gravitas, wisdom, courtliness, white hair, the whole bit. Heady stuff: me and Lloyd, serving the nation. Sure, Ralph Nader accuses Lloyd and his ilk of helping big, bad corporations get away with dirty deeds from behind a pro bono facade. But how many New England fishing jobs has Ralph ever saved?

Lloyd. That's what we were all supposed to call him, even us rookies. Seemed a bit odd, we being pipsqueaks and he an eminence grise. Lloyd was born an eminence grise, in the last generation of people who got to be grown-ups.

Anyhow, Lloyd wants a Memorandum of Law, as I rather grandly title it, on the president's power to make a fish deal with Canada. I hit the library, write many pages, tear them up, rewrite them, reinvent wheels, finally reporting that the president has lots of power over foreign affairs and can do whatever he damned well pleases about a bunch of fish. Lloyd, of course, had known this since before I was born.

Many long memos later, I leave the law firm built by Lloyd and his best friend, John Pickering. (A legal giant, advocate for liberal causes, and much-beloved figure in his own right, he died in March.) I try my luck reporting for The New York Times -- and discover the omnipresence of Lloyd.

My first big assignment is an election-year piece on Carter's judicial appointees. Who's the man to see? Lloyd, of course. Now White House counsel, he picks the judges -- setting up merit selection committees, seeking out women and minorities, doing it right.

My next big project involves the Iranian hostage crisis. The United States wants to trade frozen Iranian assets for the hostages. Complicated. Who can work out a deal? You got it: Lloyd. He's in the thick of it, figuring out how to get the big banks, the mullahs, the diplomats, the pols, the Europeans, the Algerian intermediaries, all to buy into a mega-swap. It's all part of the White House counsel's job -- at least, now it is. Along with the Olympic boycott, Billy Carter's Libyagate problems, the works.

Next comes a big Supreme Court case. The NAACP is threatened with bankruptcy by a huge damage judgment for a sometimes-violent boycott of white merchants in Port Gibson, Miss. Civil rights, First Amendment, high stakes. So who ends up at the Court arguing for the NAACP -- and boldly citing the Boston Tea Party as a precedent? Lloyd, of course. He wins unanimously, in 1982.

By the mid-1980s, his contemporaries are retiring. But Lloyd keeps popping up -- in the courts, on the op-ed pages, at meetings of

Democratic Party wise people, government-ethics gurus, the American Law Institute.

1985: French agents in New Zealand blow up the Rainbow Warrior, a Greenpeace ship on its way to protest French nuclear testing. Who does Greenpeace hire (pro bono) to go after the French government? Lloyd, of course. He wins a precedent-setting \$8.1 million award.

1987: Lloyd goes to bat for Bork. Can't win 'em all.

1992: Lloyd's friend Clark Clifford smashes his reputation on the rocks of the BCCI scandal. Just one untainted superlawyer remains. Lloyd.

1993: A former-Republican-secretary-of-State hat trick: Lloyd successfully represents Henry Kissinger (in congressional inquiries about MIAs), George Shultz (in the Iran-Contra investigation), and James Baker (in an inquiry into dirt-digging in Bill Clinton's passport files). Meanwhile, White House Counsel Bernard Nussbaum calls Lloyd now and then, maybe hoping some gravitas will rub off.

1994: Three strikes, and Nussbaum's out. Who would be a good replacement -- a real grown-up, this time, to save the White House Boomers from their own bad judgment?

I call Lloyd for the inside skinny. I get my answer the next morning, from the newspaper on my doorstep: Lloyd, of course.