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Bob Hudec: Our Days at the Court

Thomas E. Kauper*

Bob Hudec and I were co-clerks in the chambers of Mr. Justice Stewart during the Supreme Court's 1961 Term. I was in my second year as a clerk and Bob was in his first. We had both come to the Court straight from law school, with all the enthusiasm, idealism and naiveté that suggests.

It was a tumultuous time in the United States. Rosa Parks sat in the front of a Montgomery, Alabama bus in 1955. The ensuing Montgomery bus boycott brought Martin Luther King, Jr. into the national spotlight. His "I Have a Dream" speech came about a year after the 1961 Term ended, the same year as violence on the streets of Birmingham. "Bloody Sunday" in Selma, Alabama was only three years later. But the Court was not a part of this civil turmoil and strife. Cases involving these and similar events did not reach the Court until a number of years had passed. Instead, in both the 1960 and 1961 Terms the Court was dealing with issues arising out of the early days of the Cold War, cases involving the legal status of the Communist Party and the rights of witnesses before the House Un-American Activities Committee and the Internal Security Subcommittee of the Senate Judiciary Committee. In the 1961 Term the Court seemed to be besieged by these cases. The biggest case of the year, however, was *Baker v. Carr*,¹ a case dealing with the judicial role in the legislative reapportionment process. A large original jurisdiction case involving the waters of the Colorado River was briefed (with what seemed like scores of briefs) and argued.² Looking back now on the 1961 Term, however, it was in many ways typical of many. The Court dealt with a number of constitutional issues of course, but most of its work covered a great variety of other federal legal issues, from admiralty to

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1. 369 U.S. 186 (1962)

2. *Arizona v. California*, 373 U.S. 546 (1963). The case was decided in the 1962 term.

taxation. The great challenge for the clerks was in the variety. We were often asked to deal with areas about which, it must be said, we knew virtually nothing.

It was for both of us a memorable and formative year, as it undoubtedly is for every law clerk in every court term. We were blessed to work for Justice Stewart. The chambers were intimate. There were only two clerks. The Justice was in and out of our shared office, and we were in and out of his. While we were expected to do a brief memorandum on every certiorari petition, it was not a memo writing office. Justice Stewart did not need and did not ask for bench memos. We never did opinion drafts. The Justice wrote all of his own opinions. Bob and I did research on particular issues, of course, preparing memoranda that were sometimes quite long, but we were not the paper-producers that clerks in some chambers were.

There was a certain routine to our work. Memos on certiorari petitions needed to be done every week. Some petitions raised important and even exciting issues; most did not. There were weekly conferences to prepare for, opinions of other Justices circulated for comment and work to be done to help in the preparation and finalization of opinions by Mr. Justice Stewart. We met with the Justice in the evening before each court conference to go over the certiorari list and cases that had been argued and were to be voted on the following day. Discussion usually went well into the evening, with our views both sought and given. In many ways, such conferences substituted for memo writing.

This highly informal setting invited comment, discussion and contention. It was a setting in which Bob thrived. Bob was not only very intelligent, but also remarkably quick. He was certainly not timid. And he loved an argument, even if over what seemed like a rather ordinary certiorari petition. He would argue with me, with other law clerks and, on occasion, with Justice Stewart. Bob never discussed anything out of ignorance. His homework was always done. We shared the same office, with desks across from each other. When Bob began to harrumph, I knew we were in for a discussion of whatever had provoked him. We could easily lose an hour over some matter that on the surface seemed uninteresting; often it turned out to be more interesting than I thought. Bob had a knack for seeing things through a different set of eyes. We were all the beneficiaries.

While Bob loved a good argument, he always brought to it a wonderful sense of humor. Contention without humor can become intolerable. Bob knew how to break the tension of argument with some truly funny off-the-cuff remark. His humor was seldom at the expense of others. As often as not it was self-deprecating. And it revealed a quickness and agility of mind that characterized much of what he did.

Saturdays in the office were special. Justice Stewart was always there. Much of his writing was done then, when the building was quiet and interruptions were few. Because there was no food service in the building on weekends, his clerks were invited to join him for lunch at the Methodist Building across the street. These lunches were informal, often funny, with conversation ranging from Justice Stewart's beloved Cincinnati Reds, to politics and, occasionally, matters before the Court. They provided a glimpse of the personal side of the Justice that we did not normally see in the office, and were occasions to be cherished. Bob was not a Saturday person at the outset, but it did not take long before he too was a Saturday regular.

Like everyone else, Bob had his foibles. Because Bob and Marianne took an apartment in the Virginia development where my wife and I were also renting, we frequently drove together to the office. It can fairly be said that at least at that point in his life Bob was not an early morning person. Arriving at the car with breakfast in one hand and articles of clothing in the other, the last of his morning rituals was finished about the time we crossed the Fourteenth Street Bridge. I swept the crumbs out later.

Bob also had a near obsession with bad writing. He wrote very well and could not understand why others wrote so poorly. In the 1960s there were too many certiorari petitions written by lawyers for whom English was at best a second language. One that Bob handled was even written in very bad verse. All of us were bothered by bad prose but Bob treated it as a kind of personal affront. He would often insist on reading egregiously bad passages aloud, with a certain dramatic flair, followed by his own devastating comments. More than once he commented that if Abraham Lincoln, with his sparse formal education, could so eloquently write the Gettysburg and Second Inaugural addresses, it was depressing that someone with at least seven years of college and professional education could not manage an intelligible sentence. This passion kept all of his co-clerks on their toes. No one wanted to be Bob's next target.

In the course of the term, Justice Stewart wrote opinions in labor,³ admiralty,⁴ criminal procedure,⁵ immigration,⁶ and drug addiction⁷ cases as well as cases arising out of congressional subversive activities hearings.⁸ My memory has faded, and I cannot identify in every instance which opinions were worked on by each of us, nor can I always identify opinions of others that came across our desks. I can say with some confidence, however, that there was little substantively that could either have forecast or prepared Bob for his interest in international trade and the influence he had in developing that whole field as we now know it. I am equally confident that he left the Court, as I did, with a great respect for the institution and its processes, a respect that was an integral part of our subsequent careers. I cannot imagine a stronger foundation for a career in the law, whether in international trade or, in my case, antitrust.

Before his death, Bob was teaching at Tufts and for a semester I was also teaching in Boston. It gave us a chance to resume our friendship directly. My wife and I cherish the evenings we were able to spend with Bob and Marianne. We had mellowed, and it was a time to reminisce. The time for debate was over. Our families were started at the same time and we had a chance to catch up about children as well as careers. As it turned out, the last of those Boston dinners was our goodbye.

3. *Dowd Box v. Courtney*, 368 U.S. 502 (1962); *Local 174, Teamsters, Chauffeurs, Warehouseman and Helpers of America v. Lucas Flour Co.*, 369 U.S. 96 (1962); *Marine Engineers Beneficial Ass'n v. Interlake Steamship Co.*, 370 U.S. 173 (1962)

4. *Morales v. City of Galveston*, 370 U.S. 165 (1962)

5. *Machibroda v. United States*, 368 U.S. 487 (1962); *Hill v. United States*, 368 U.S. 424 (1962).

6. *Rusk v. Cort*, 369 U.S. 367 (1962).

7. *Robinson v. California*, 370 U.S. 661 (1962).

8. *Russell v. United States*, 369 U.S. 749 (1962).