

LEARNING LIFE'S LESSONS

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Halfway through my clerkship with the Chief Justice, I committed a significant blunder. In an opinion for the Court authored by the Chief and for which I had prepared a draft of the section on procedural history, I had made an error. In describing the lower court's holding (on a matter not at issue when it arrived at the Court), I had described the appellate court as having reversed, when, in fact, it had affirmed the trial court. Because that portion of the procedural history was not significant to the Court's judgment, that portion of the draft opinion received little attention in the subsequent vetting within the Chief's chambers or, I imagine, in any of the other chambers. Thus, the opinion issued with the mistake incorporated, including directions for a remand back to the appellate court for further proceedings. While the error in the procedural history did not matter to the issue the Court was deciding, it was of real concern to the litigants, who feared that the remaining proceedings below could be prejudiced by the error in the Court's description. Thus, they filed a motion for rehearing.

When the petition came to my attention, I was, of course, mortified. I prepared a memo to the Chief, explaining the error and confessing my embarrassment at having confused "reversed" with "affirmed." I got it to him late in the afternoon and then had a sleepless night. Early the next morning, he called me into his office. Two things of consequence—at least for me—then happened. First, he indicated that he would circulate a memo to his fellow Justices, describing the mistake and suggesting that the most efficient way to fix it would be to convey to the counsel of record that the matter would be treated as a typographical error and corrected before the opinion was memorialized in the official reporters. He had thus found an efficient solution to a mistake I had caused.

More remarkably for me, he then went on to observe that, having himself once clerked for Justice Jackson, he imagined that I was feeling pretty low about the error. To say that he had read my mind on this point would have been an understatement, and I agreed that I was. He then told me a story about his

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early practice life in Phoenix, which had included working on land matters as a young associate in a firm. He relayed an incident in which he had erred in describing the plat information for a transfer, a mistake later caught by the senior partner. The point, he made clear, was that young lawyers will make mistakes; that's why they are young lawyers. He then finished with a laugh—"Things seemed to have worked out okay for me, so you shouldn't take this too much to heart."

Some fifteen years later, no longer such a young lawyer, that moment still springs readily to mind because it demonstrated several of the Chief's essential qualities. On the legal issue, he found a quick, pragmatic means for resolving the problem of the erroneous opinion, an approach that would fix things with a minimum of fuss but would nevertheless serve the Court and the litigants. And at a time when he had a perfect right to be angry with me for making a careless mistake that could have embarrassed him and the Court, he instead found in it an analogy to the day-to-day experience of lawyers everywhere, an analogy rooted in his own experience as a local practitioner thirty years earlier. He demonstrated that even though he had achieved the pinnacle of American legal success, he'd forgotten neither his own roots, nor what it was like still to be young and learning.

Qualities such as these made clerking for the Chief an education in life, as well as in the law. He had an astounding memory, wide-ranging interests, and an affinity for proverbs and phrases. Discussions with him on topics ranging from sports, politics, and history, to art, geography, and the weather were all equally likely—and equally engaging. Despite the fact that he invariably knew more than you about any of these topics, they were always two-way conversations rather than the lectures of a bore who knows he knows more than you. On the odd occasion where a disagreement emerged, when an intemperate soul might cause one to suggest that the Chief was wrong about who would win the upcoming Michigan State-Wisconsin football game (I was a Michigan State grad, the Chief a native of Wisconsin), his offer of a \$1.00 bet was sure to follow, as well as his demand that he be given points.

The Chief was also a man of quick, dry wit that often drew on his affinity for proverbs and Latin phrases. Once, while partnering with the Chief in tennis doubles but with him nearer the net, I hit a short lob that produced a "sitting duck." We both prepared to dodge as, on the other side, my wife wound up to put the ball away. She took a powerful swing, struck the ball forcefully in the Chief's direction but, having been too greedy in her efforts to punish the errant shot, overswung. The ball caught the net and dropped harmlessly on her side. As the Chief moved to prepare for the next point, he turned to her and observed, deadpan, "Evil be to him who evil thinks."¹ Such moments, in which

1. Edward III, King of England (1327-1377), Motto of the Order of the Garter, *quoted in* POLYDORUS VERGIL, *HISTORIAE ANGLICAE* (1535). Alleged remark at the falling of the Countess of Salisbury's garter, presumably when the Order of the Garter was founded in

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he combined a comic's timing with an Oxford don's erudition, were common, while equally likely to draw on references to classical Latin or to popular show tunes.

In assuming that unique mentoring role that any judge undertakes with a clerk, the Chief taught more by quiet example than express instruction. At least for me, the single biggest lesson he conveyed was a lesson of life, not the law. And that lesson is the profound gulf that exists between taking one's work seriously and taking one's self seriously. As to the first, he was, obviously, a Justice who has left a considerable jurisprudential legacy. He did so, in part, simply through constancy of commitment and determination. In this respect, it is unsurprising that one of his favorite comments to me, repeated a number of times, was that many aspects in life, both professional and personal, require one to be "like the Roman Legion, of whom it is said they sometimes lost a battle but never a war, because they never stopped fighting until the war was won."

Yet in fighting the various doctrinal battles that necessarily engage all Justices, he never fell victim to a sense that he was better than those who surrounded him. Late in my clerking year, he accepted an invitation from me and my fellow clerks to join us at a baseball game in the newly opened Camden Yards in Baltimore. Having not thought the matter through entirely, it then occurred to us that none of us possessed a car nice enough to serve as transportation for the Chief Justice of the United States for the hour-long trip. Yet, when we showed up in a well-worn Honda Civic and invited him to climb in, he batted not an eye. Perhaps it was because he was comfortably decked out in a fairly ancient Seattle Pilots baseball cap of a vintage well exceeding the car's. And once we arrived at the game, he even seemed to delight in a fan who spent the good part of an inning leaning over us and spilling beer as she tried to attract the attention of one of the players in the dugout with high-pitched screams that threatened our ear drums. His only observation on leaving was that the game and fans "had exhibited a lot of local color."

It is probably fair to say that most Supreme Court law clerks are ambitious and, at the stage at which they are clerking, especially prone to value work over family, law over love, and material possessions over a satisfied soul. The Chief seemed to recognize this and sought to shake those tendencies in ways subtle, rather than direct. He spoke often of the value in leaving Washington and returning to a community in which one could lay down roots, he described with evident pride the achievements of his children and grandchildren, he quoted poetry, and he invited his clerks to an outing at a cabin he owned in the woods, with the day spent clearing brush and playing croquet. Each of these essentially showed, through example, what he thought most important: to live life in a manner that produced a contented balance.

1344. No contemporary evidence whatsoever exists for the attribution, but the traditional tale was current in Henry VIII's reign, when Vergil was writing.

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He did so himself. Those who got to clerk for him are more likely to do so also, having seen his example.