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Leslie Klaassen

Howard Srebnick

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# A SPECIAL CONCURRENCE

*Leslie Klaassen\* and Howard Srebnick\*\**

By the time we arrived at his chambers, Judge Irving Goldberg was in his mid-eighties and fighting physical limitations. Confined to a wheelchair and occasionally using a walker in chambers, Judge Goldberg cared passionately about reading, talking, listening, thinking, and learning. Nothing could mesmerize the Judge like the challenge of crafting an opinion. He adored spirited debates about the law, politics, and history. As a man of great depth, both intellectually and personally, he had earned a reputation as a magnificent jurist through his incisive thinking and clever writing.<sup>1</sup> Yet, at eighty-five, he still saw himself as a student of life and the law, and he loved both.

Judge Goldberg had the generosity of mind and spirit to consider his law clerks his intellectual peers and members of his family. Clerking for Judge Goldberg meant more than simply researching the law and drafting opinions; it meant an invitation to lunch every day and an open door to his home, a willing listener and unselfish advice, it meant the warmth and affection of a true and loyal friend. It is easy to understand that we worried that whatever we wrote about the Judge would be inadequate. Would we pay suitable tribute to this man of wisdom, intelligence, wit, and kindness who opened his chambers and his heart to his law clerks? The greatness of his legal legacy will live through the hundreds of opinions for the majority, concurrences, and dissents he authored while on the court. We hope that others can know the richness of the relationship between the Judge and his law clerks through our story.

Each morning, the Judge's personal assistant, Helen Torres, would wheel him into chambers promptly at 10:30 a.m. While Helen made sure that the Judge was settled comfortably, his longtime secretary and confi-

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\* Corporate Counsel, Fujitsu Network Transmission Systems, Inc., Dallas, Texas; J.D. cum laude 1991, Southern Methodist University School of Law.

\*\* Associate, Law Offices of Roy Black, P.A., Miami, Florida; J.D. magna cum laude 1989, Georgetown University Law Center.

Ms. Klaassen and Mr. Srebnick clerked for Judge Irving L. Goldberg from 1991 to 1992. President Johnson appointed Judge Goldberg to the United States Court of Appeals for the Fifth Circuit in 1966, where the Judge served until his death in 1995.

1. Others have written eloquently about the Judge's professional and personal history. See, e.g., Patrick E. Higginbotham, *Irving L. Goldberg Memorial*, 73 TEX. L. REV. 973 (1995); Diane P. Wood, *Tribute to Judge Irving L. Goldberg: The Consummate Humanist*, 73 TEX. L. REV. 977 (1995); Lee M. Simpson, *A Tribute to Judge Irving L. Goldberg*, 73 TEX. L. REV. 981 (1995); William R. Pakalka, *Profile: The Many Loves of Irving L. Goldberg*, 12 FIFTH CIR. REP. 103 (1994); Lawrence J. Vilaro & Howard W. Gutman, *With Justice from One: Interview with Hon. Irving L. Goldberg*, LITIG., Spring 1991, at 16.

dant, Donna Hocker, briefed him on office matters. Then the Judge would call us in for the morning meeting. We would discuss the Judge's work first, focusing on opinions-in-progress and court matters. The Judge would return calls to his colleagues on the court and make calls to discuss court business: "Irving Goldberg here. Is the judge in?" After the phone calls, our conversation would shift to current events in the world and in our lives. We kept nothing from him. He delighted in each little detail, from relationships and career plans to the previous night's movie or dinner menu.

The Judge generously shared the appellate tasks of preparing for sittings and researching and writing opinions with his clerks. He engaged us in a constant dialogue of ideas over cases to be heard and opinions to be written. Donna had arranged his phone so that he could buzz us in our offices to let us know that he needed to speak with us—right away! When we heard the buzz (which could happen five or more times a day, depending on his need to discuss the day's work with us), we would jump up and run into his office—"Yes, Sir!" Then, while contemplating the intricacies of a particular argument or mulling over an apt theme to use in an opinion, the Judge would munch away at chocolate. Amazing amounts of chocolate! Donna kept stacks of chocolate bars on his desk for us to unwrap and hand to him while we chatted.

The Judge demanded that each opinion be not only a judicial decision, but also a teaching tool. He encouraged us to express a holding and the supportive reasoning in more than one way, so as to enable the largest possible audience to comprehend the legal concepts. "More words, more words!" We had wondered how each of his opinions over the years sounded so deeply "Goldbergian" when his law clerks did so much of the writing, but we learned that each opinion was drafted through hours of discussion in chambers. After researching the law, we would analyze the precedents together with the Judge. He would often ask us to look up a word in the thick dictionary that occupied a prominent place in his office to ensure its correct usage or to satisfy his (or our) curiosity. (This was the way we discovered that we were each serving as an "amanuensis" to the Judge!) Often a theme would be chosen for an opinion when the Judge believed that the theme would enable the reader to achieve a better understanding of the legal analysis. We enjoyed brainstorming over the appropriate theme for a particular opinion. A sudden inspiration would possess the Judge and, eyes twinkling, a hand raised for emphasis, he would quote a poem, a passage from a novel, or a historical figure. Although the analytical process sometimes seemed excruciatingly intense, we took great joy in exploring the law with the Judge. When we completed a draft of an opinion, he would ask us to bring it to him, so that he could study it with us. We would slowly read each word of the opinion out loud. Only then could he be certain that the opinion met his standards.

Physical limitations kept the Judge from going out for meals, so he often invited his colleagues and friends to share a meal with him in chambers. Frequent visitors included the Judge's brother-in-law, Mendel Melasky, his longtime friend, Irving Sanger, Judge Barefoot Sanders, Judge Steve Felsenthal, and contingents of lawyers from Akin, Gump, Strauss, Hauer & Feld, the law firm the Judge helped found many years ago. As his law clerks, we were invited to share lunch with him every day. Through Donna and Helen, he kept the small kitchen in chambers stocked with good things for us to eat for lunch and snacks. Storytelling at lunchtime became a ritual. A large map of the United States had been hung above the kitchen table where we ate lunch. We would pick out a city and the Judge would amuse us by recalling an experience there. One lunch hour we pointed out city after city, determined to find a place that the Judge had not visited, but he had traveled to every destination we could imagine.

Other Fifth Circuit judges sitting with him in Dallas would always be invited to a special lunch in chambers and the invitation extended to the judges' clerks and staff. An excellent lunch would be catered, and the Judge would be enticed into telling stories about his past. One such lunch fell during Mardi Gras week when Judge Duhé, from Louisiana, happened to be sitting with Judge Goldberg. Judge Duhé and his clerks brought a large King Cake to the lunch and furtively arranged for Judge Goldberg to get the toy baby in his piece of cake. Upon the Judge's discovery of the toy, the crew from Louisiana crowned Judge Goldberg as the King of Mardis Gras. He wore the crown and royal necklace all afternoon!

We traveled to New Orleans together when the Fifth Circuit sat en banc. The Judge, having already prepared thoroughly for the sitting, would make arrangements for meals at his favorite restaurants. Although these outings were difficult for him physically, he would bear the discomfort and awkwardness to share these experiences with us. After twenty-five years of visiting New Orleans regularly, he was somewhat of a celebrity in the French Quarter. Yet he took the most pride in introducing us to his friends at the hotel and the restaurants, to the other judges and the court staff. The Judge would boast of our modest accomplishments to the others, never mentioning his remarkable achievements. Everyone knew just how fond he was of his clerks—and how devoted we were to him.

At the end of the work day, we would gather again in his office. Surrounded by all of us, he would inquire about our plans for the evening. Where would we dine, what book would we read, what movie would we see? When he arrived at home and got all situated, he would ring chambers to see who was there and how the work was progressing. The conversation would always end with concern about our well-being: "Go home, get something to eat, there is always tomorrow."

Irving Goldberg wore his robe without pretension and with humanity. Judge Goldberg never thought of himself as king of the court, although many came into the court with praise.<sup>2</sup> In life and in the law, he was good; and we believe that his truth will endure.<sup>3</sup>

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2. *Cf.* Psalm 100.

3. *Id.*