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Travels with Otto

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TRAVELS WITH OTTO

*Joseph R. Grodin**

I had met Otto Kaus before he was appointed to the supreme court, but only casually; we were both on the court of appeal, he in Los Angeles and I in San Francisco, and we saw one another at state-wide conferences. After his appointment he rented some rooms in a Berkeley house near ours, and we began to commute together across the Bay Bridge. My appointment to the supreme court came a year and a half later, and of course then I saw a great deal of him in and around chambers, but it was still the daily commute that provided the venue for our most lively conversations.

Otto did love to talk. In fact, when he was not talking I knew something was amiss. One day I was driving home with one of our research attorneys in the front and Otto in the back. We started to talk about a case that interested me a good deal because of my labor law background—it involved the remedy for union members who complained of their dues money being used for purposes to which they objected—and I was holding forth at what must have been boring length, for when we got off the bridge I turned around to observe Otto sleeping soundly.

But he was tired that day. Otto in fact was interested in everything—in the intricacies of legal rules, in the history of legal institutions, in the depths of Wagnerian opera, in what motivated his colleagues on the court, even in use of union dues money—and there was nothing on which he did not have an opinion, often as not a well-considered one at that, so that driving with him back and forth across the bridge, typically accompanied by brilliant court lawyers, was sort of like participating in a continuing seminar on *The World*.

We would talk about pending cases, unless there was a “stranger” to the court on board, and on Monday mornings we would often discuss the memos we had both read over the weekend pertaining to cases on the Wednesday conference docket.

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Otto had a remarkable ability to cut through rhetoric to the essential issues that a case presented and a strong sense for the justice of the case. We were in agreement most of the time—I believe more often than any other two justices on the court during that period—but when we disagreed it was always with the greatest respect for one another's views.

Otto was a worrier. He worried, usually without foundation, about the wording of opinions, about giving offense to colleagues, about possible improprieties in talking with the press, about any number of things—but he combined his worrying with a wonderful, often ironic, sense of humor. It was in the midst of worrying about the outcome of the 1982 retention elections when he was on the ballot (he won easily) that he made his famous remark concerning how the imminence of an election might affect the thought processes of a sitting judge. It was, he said, like going into the bathroom to brush your teeth and trying to ignore the crocodile in the bathtub.¹ But I never got the sense that Otto's opinions were in any way affected by the crocodile.

When I think of Otto I think mostly of those trips back and forth across the Bay Bridge together, not only because of the opportunities they provided for intimate conversation, but because in a way they symbolized an aspect of Otto's existence. Otto was a traveller throughout his life. Uprooted by the Holocaust from his childhood in Vienna (he had a Jewish mother) he was educated in English schools. He came to the United States in time for college, the Army, and law school and to all outward appearances he had become thoroughly Americanized, but there was about him the sense of a displaced European, a cosmopolite with a sense of irony, a civilized man set down in a not quite civilized country. I don't mean that he had an aura of superiority about him—quite the contrary, he was among the most modest of men—but rather that his *weltanschauung* remained essentially European, and this aspect of his personality lent a special character, a certain depth, I believe, to his thinking and to his work as a judge.

I miss those trips. I think of Otto often. I imagine him off travelling somewhere, perhaps being consulted by the angels about this or that aspect of the human dilemma, perhaps answering with a wry shrug, a wise suggestion, a touch of humor, a precious insight

1. See JOSEPH R. GRODIN, IN PURSUIT OF JUSTICE: REFLECTIONS OF A STATE SUPREME COURT JUSTICE 177 (1989).

delivered with charm and respect. The angels could do a lot worse.