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PRESIDING JUSTICE OTTO KAUS, FRIEND AND COLLEAGUE

*Herbert L. Ashby**

Everyone knew that Otto was a judicial genius. Most never realized that he was never that impressed with his gift. He had no ego when it came to legal decisions and opinions. He cared not who solved the problem. He used to thank Clarke Stephens, Jim Hastings, and me when we pointed out a mistake he made or suggested a better solution to a problem. When Otto decided a case and wrote the opinion, he approached it like a scientist searching for the truth. He never strived for a particular result. He was the antithesis of the "have opinion, need case" school of judging. Otto was always the trustee of his judicial power, never the beneficiary. In the ten years I worked with Otto in Division Five, I cannot remember one ideological argument. Otto was interested in the legal distinctions, the perfect syllogism, the precise word, the well turned phrase, and the correctness of the decision. He felt the same way about our opinions. In Division Five, in those days, we believed that when we signed a colleague's opinion it was our opinion too, so we all helped to perfect it.

Everyone who met Otto was aware that he was a fascinating talker. Otto collected knowledge. He knew a lot about everything. It was easy to just sit back and listen to Otto and learn something. Most people do not know that Otto was also a fascinated listener. He wanted comment on his opinions and views. He always listened very intently and considered every word. He treated opposing or alternate views like hypotheses. He tested them out. He was ready to accept and adopt any view that was sound. He never listened just to allow you your turn while he fashioned counterarguments. When you discussed a legal matter with Otto you felt an obligation to know what you were talking about because Otto was so earnest and sincere in his efforts to understand and evaluate what you were telling him. I think my

* Associate Justice, Court of Appeal, Second District, Division Five, 1972-1992; currently serving as a private judge.

above mentioned former colleagues will agree that some of Otto's style rubbed off on all of us. It is amazing how problem solving efficient you can become when you seriously listen to other views to understand them rather than merely falling into contradiction or zeroing in on a small margin of difference.

As I said, Otto was interested in everything. During the years I coached girls' soccer, Otto came into my chambers every Monday morning during the season to talk about the game that weekend. His sports interests went beyond soccer. He was also an Oakland Raiders fan. Somehow I found that to be incongruous, but it is another example of the breadth of his interests. If he actually had a Raiders jacket I never saw him wear it.

In his time on the court of appeal Otto was the most distinguished and respected justice. To those who did not know him well he appeared to be very formidable. Ironically, he was the only justice who was usually referred to only by his first name.

Over the years that Clarke Stephens, Jim Hastings, and I worked with Otto we all became very close. For years we had lunch together almost every day. Clarke, Jim, and I took the position that because Otto was the presiding justice he was responsible for everything that was not specifically assigned by law to one of us. For that reason, when we went to lunch we held Otto responsible for getting us a good table. It started as a joke, but Otto took it seriously and after a few months it became a tradition. Otto would push his way through the crowd to get us on the waiting list while we stood serenely apart from the crowd. We frequently complained about the table he got for us or even the restaurant, but Otto never shirked from that duty or seemed to mind our needling.

I feel very fortunate to have spent my first ten years in Division Five with such fine colleagues. It would not have been the same without Otto. He truly was one of a kind.