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REMEMBERING MY FATHER, OTTO KAUS

*Stephen Kaus**

I would like to share a few memories as Otto Kaus's son. Others will write about my father's legal skills. I am writing about my father *qua* father, as he would have said.

Not that this personal approach removes us too far from the law. It was no coincidence that both Otto's sons became attorneys.¹ No other profession was considered seriously in our house, and I, at least, had no other discernable talents. Otto not only provided a wonderful model, he encouraged us with trips downtown to watch his trials. Memories from one's youth are not always reliable, but my recollection is that Otto tried some very dull cases. Luckily he realized this and pointed me toward more interesting proceedings in other courtrooms, such as Melvin Belli arguing a polio vaccine case, the Onion Field killers jousting with the judge over Irving Kanarek's talents, and the "Flying" Finn Twins, Los Angeles *pro per* legends, staging a 1960s version of a courtroom circus.

Otto was supportive of my decision to become a public defender. Unlike many others, he never asked how I could defend "those people." Indeed the high regard with which Otto held criminal defense attorneys was evident from his opinions finding apparent incompetence of counsel actually to be a strategic choice, thus avoiding the need to reverse the client's conviction.

Otto also encouraged, at least initially, two of my other predilections, attendance at baseball games and operas. The baseball came by mistake. Otto was a Brooklyn Dodger fan and in 1955, he was listening to the Dodgers' first successful World Series while attempting to construct an HO railroad for me to enjoy. I was much more interested in the game than the train, and by the next year, we attended a Hollywood Stars game together, sitting right behind the plate for a game notable for the animated umpir-

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1. My brother, Mickey, graduated from law school and clerked for California Supreme Court Justice Stanley Mosk before abandoning the profession to kibitz with some success in various magazines.

ing of Emmet Ashford, who later became the first African-American major league umpire. Soon expansion happened, and we were bargaining over how many Dodger and Angel games we would attend. Otto was probably sorry he had ever started it.

But law was first in Otto's heart, and as I sat rooting for Sandy Koufax, he was usually talking about some legal point with a friend. I failed to see how an evidence point could be more interesting than the Dodgers playing the Mets, but Otto had his priorities. This all came to a head on Saturday night, May 5, 1962. I wanted to see the new Angels' pitcher Bo Belinsky pitch against the Orioles. Otto wanted to watch *Perry Mason* and *The Defenders*, not even *real* law! So we stayed home, missing Belinsky's no-hitter. From then on I went to games on my own, utilizing the No. 4 bus down Olympic, various discount tickets, and a very un-Ottoesque predilection for sneaking into better seats.

One of the enjoyable aspects of Otto's appointment to the supreme court in 1981 was that it gave me a chance to spend some time with him, something that I had not done regularly for fifteen years. Otto rented a (large) studio apartment over a garage in South Berkeley and lived there Monday through Wednesday, returning to Los Angeles Thursday night to work in the court's office there. My mother outfitted the apartment with pots and pans, which Otto gave me when he returned to Los Angeles. I don't think much cooking was done in that apartment since I had to soak off the paper labels on the inside of the pans before I could use them.

Every Wednesday, the day of the court's conference, Otto felt free to go out for dinner instead of reading memoranda until he dropped or pecking out opinions on his Smith-Corona.² In a vain attempt to entice Otto to stay on the court despite my mother's forceful and somewhat justified demands that he return to Los Angeles, I suggested that we procure two Wednesday night opera subscriptions. Otto had loved opera since his youth in Vienna, where he saw Lotte Lehman and other greats in the 1930s. Unfortunately for us, and, some would say, for California's legal system,³

2. Otto later mastered the computer to some extent, producing largely unformatted WordPerfect documents for others to finish. Taking nothing for granted, he tried taking a class in DOS at Beverly Hills High School, earning what I will call a "gentleman's incomplete."

3. It is difficult to read Otto's brief but incisive opinion regarding the difficulty of making plaintiffs whole for bad faith breaches of contract in *White v. Western Title Ins. Corp.*, 40 Cal. 3d 870, 900, 710 P.2d 309, 328, 221 Cal. Rptr. 509, 528 (1985)

the San Francisco Opera mounted unmemorable and even painful performances on the Wednesday nights we attended, including the worst production of Verdi's *The Masked Ball* this side of Anna Russell.⁴ It featured Carlo Bergonzi in his dotage and Carol Neblett, who sang even worse than Otto in the shower, which was badly indeed. Shortly thereafter Otto retired from the bench. Who could blame him?

Otto's death leaves an empty place in my life. Things happen in my career and family that I would like to share with him, that I should be able to share with him, but I cannot. Still, I must remember that Otto had his health and his wits until near the end, and that he lived out his life as he wanted to, not playing golf but by practicing law. Also, happily Otto knew his grandson Jason, who was two years old when they last met and, with Jason standing on Otto's bed, shook hands. Otto had no business, as such, to leave my brother or me or Jason, but he left us much more: a legacy of integrity, intelligence, warmth, and humor. I miss him.

(Kaus, J., concurring and dissenting), without wishing that he had been on the court to contribute to *Foley v. Interactive Data Corp.*, 47 Cal. 4th 654, 765 P.2d 373, 254 Cal. Rptr. 211 (1988) and *Moradi-Shalal v. Fireman's Fund Ins. Cos.*, 46 Cal. 3d 287, 758 P.2d 58, 250 Cal. Rptr. 116 (1988), two cases that departed from precedent to limit plaintiffs' causes of action and damages without any satisfactory explanation.

4. Anna Russell, whom Otto appreciated greatly, sang opera badly on purpose to be funny.

