Judge Weinfeld, A Recollection

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We were fiercely proud of him, Bruce and I. We had to be, by then. He'd been sitting there, late and early, reading the print off the pages since before we were born. How much he taught us, in those first few terrifying weeks, we never really knew. Understanding became second nature so quickly that we soon forgot we'd ever never known.

Days became months, and we began to find our way. We learned to keep a couple of complex motions ready for disposition so that, no matter how busy one of us was on trial, we could always meet the Judge's anxiety that work was "piling up" by putting on a sudden burst of speed. I brought a computer into Chambers for the first time, a couple of years before the AO realized that judges needed more than a secretary's word processor, and we shared it between the two of us, trying to increase productivity without raising (God help us) the Judge's expectations.

So he grew accustomed to us, and when—after only fourteen hours in the office during the heat of August—he stopped in to say "Good night, boys," we could hear the new note of confidence. For a few precious hours, until 4:30 a.m. or so, he could trust us to keep the boat afloat.

It must have been about two months in that we held our first quarterly calendar call. It came as a pleasant surprise to discover that the pillars of the New York Bar were now more afraid of Weinfeld than Bruce and I were, and we learned the great lesson that litigation settles when a judge no one expects to reverse on appeal says "ready for trial on 24 hours' notice."

The Judge never thought of himself as a case manager, I believe. He drove himself and all the clerks so hard all those years because he thought the work in imminent danger of spiraling out of control. But the same work rules that gave him confidence in his own decisions—to hear argument on all motions, to read every scrap of litigation paper before the law clerk's memo, to spend no time in settlement conferences, to be ready to try everything—also controlled the docket. Hearing your own discovery motions brought even the most ill-disciplined users of this farcical "self-executing" system into line. The calendar calls and the Judge's open door policy ("my courtroom door is open: try your case") helped parties to find their own way to settlement without investment of the Judge's time. And no one read more carefully than the Judge, as every Tuesday morning showed.

All Monday night, racing to be done before he arrived at 4:30 a.m. Tuesday, we had been preparing the motions. Each one, large summary judgment showdown or the smallest discovery dispute, carefully prepared with the papers in order and our memos on the bottom. By the time we arrived between 7:30 and 8, bleary from a few hours of snatched sleep, the reading process was far advanced. The buzzer would go off relentlessly (one for Bruce, two for me) and the search for agreement would be on. Why did I think summary judgment could be granted here? Hadn't this discovery become abusive? Hadn't I overlooked an uncited case that would have bolstered defendant's motion to dismiss? I've been asking questions in law school classrooms for almost a decade now, and whatever my students may think, they've never been through anything like Weinfeld's Tuesday morning tutorial in advanced civil procedure. Like so many before us, Bruce and I sweated, and we thrived.

Christmas Day I was in the office; he called to invite me for dinner but I knew he wanted to charge the jury next morning (yes, on December 26th) in a five-week RICO trial with ten codefendants, and there wasn't much time. By then Bruce and I had learned that "good night, boys" could be the signal to try some experiment in making the Judge's life a little smoother. There was, for example, the great mystery of the missing first scrapbook. All his life Weinfeld kept commonplace books recording the events that shaped his time. The very first, full of Woodrow Wilson and the League of Nations, along with the Judge's own time as a student at NYU, was lost. For years, Marie told us, he had fretted about it. For weeks, after "good night, boys," we took the chambers apart. At last we found it, caught behind the wall paneling in a file closet. Some intricate custom fishing gear contrived from coat-hangers and we brought it out by the binding. I don't remember that he said anything much about it to us, but we knew how he felt.

Precision was all. My desk, never a precise place, he tolerated with only an occasional outburst. But Bruce and I were learning even the sorts of precision that Bruce (ever a neatnik) didn't have. A new judge, short of experience in criminal cases, came on the bench during the winter, and one long Monday night we looked up from our work to find both of his clerks standing in our office. "Please," they said, "our judge needs to take a guilty plea tomorrow—how's it done?" "Oh," we said, "just have a seat," and then and there, without looking up, Bruce and I ran through a plea allocution, in unison, word for word. About some things, there's only one right way. Preparation, he said, is about finding the one right way. "If we're wrong on the law, the Court of Appeals can always straighten us out. Be we have no right to be wrong about the facts."

The Judge liked one of us to be present when a case of his was reviewed "upstairs," and so most of the Second Circuit arguments I've ever attended were pretty lopsided. Later on (thanks mostly to the Judge) I watched plenty of lawyers argue in the United States Supreme Court too, but I've never seen an advocate with a harder job than that of explaining to Judge Friendly how Judge Weinfeld had abused his discretion. It may not have been as easy for them to admit it as it was for Bruce and me, but I have a sneaking suspicion that the Court of Appeals was fiercely proud of Judge Weinfeld too. They should have been. As Bruce and I were learning, the most underrated component of justice is the hard work of getting to it. No one demanded that more, or drew it more consistently out of himself, than Judge Weinfeld did.

Spring blossomed, New York humidity began to be tangible at street corners, and I knew the Judge was beginning to dream of blueberries. All winter we had been subsisting Saturday mornings on bagels, but at the outset I had learned to bake blueberry muffins late on Friday nights, and now I could tell he was wondering when I would start again. We would discuss in passing, from time to time, the price of hothouse fruit in East Side delis, and the Judge would express contempt for anyone with the soulless willingness to charge six dollars a pint. So we waited for the price to fall, knowing that those first tastes of the fresh blueberry muffins he loved would mark the beginning of the end of the partnership with which, for a year, he had blessed us.

He said "good night, boys," now in long early-summer daylight and sometimes, only half believing our good fortune, Bruce and I also found ourselves on the street parting for home before sundown. Blueberries were a drug on the market and I could bring a dozen muffins or so, still warm from the oven, to Saturday breakfast. Now we could taste in them what he did: sweetness, intensity, satisfaction for a week of doing justice. And, so sadly as with all sweet things, the certainty of endings.

And so it proved. I went to Washington for a year, and when I returned it was another blueberry season, so I came downtown for 6:30 breakfast. He ate but half a muffin, and I knew we were approaching a yet more final parting. I see him now sitting in his chair by a desk full of motion papers neatly lined up, the Hebrew Scriptures in his lap, gesturing animatedly with his great strong hands in conversation with an early visitor, before sunrise on a winter morning. His bow tie (I have it still, and wear it sometimes) marks him of a place and time, but the face and manner are eternal. The sages of our people read those commandments with the same unswerving commitment; the Year Books record his courtroom colloquy with counsel; John Marshall would have valued him no less than Thurgood Marshall did. In his face I see the best that can be made of the human desire for justice: the modest dignity of self-sacrificing work, the belief in judging rather than judges, the endless willingness to take pains to get it right. "There are no small cases," he said a thousand times, and this is true, but only in the court of a very great judge. He sought to do justice all the days of his life, and what little I know of that infinite, human mystery I learned from him. Good night, Judge.