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Justice Hugo Black and His Law Clerks: Match-Making and Match Point

TODD C. PEPPERS*

Introduction

What greater or better gift can we offer the republic than to teach and instruct our youth?

—Marcus Tullius Cicero¹

Much has been written about Supreme Court law clerks and the important role that they play in assisting the Justices processing the work of our nation's highest court. While law clerks in the late nineteenth century primarily served the role of stenographers and research assistants, today these young men and women—all recent graduates of elite law schools—work in close quarters with their individual Justices, reviewing petitions for writ of certiorari, preparing the Justices for oral argument, and assisting in the drafting of legal opinions. At the end of their clerkships, the clerks find that they are faced with a dizzying selection of job opportunities—from teaching

at a top law school to becoming a highly compensated associate at an elite law firm (with the attendant six-figure signing bonus) or working for the federal government.

As a scholar who has studied law clerks for the last decade, I have found that often the most fascinating aspect of the “clerkship institution” lies not in the job duties or subsequent professional achievements of law clerks, but in the personal bonds that form between a small handful of the Justices and their clerks. While the modern Supreme Court Justice is authorized to hire four law clerks each Term (the Chief Justice can employ five clerks), in the early decades of the twentieth century, the

Justices hired only one or two clerks per Term. The combination of a smaller staff, fewer law-clerk responsibilities, and home offices for the Justices meant that the clerks had the rare opportunity to interact with their Justices in less formal and more relaxed settings. Thus, we have wonderful stories of Oliver Wendell Holmes, Jr. and his “legal secretaries,” who balanced the Justice’s checkbook, accompanied him on sightseeing jaunts, and reveled in the Magnificent Yankee’s “tall talk” of the Civil War. Or tales of Felix Frankfurter and his clerks, with whom he fiercely debated the finer points of art, music, and politics while embracing them as surrogate sons. Even the poor souls who clerked for James McReynolds have left behind invaluable glimpses into the personal life of their employer, such as the recently published diary of former law clerk John Knox and his captivating account of suffering through a year with the grouchiest man to have sat on the Supreme Court Bench.

After reviewing the law-clerk files in the personal papers of Justice Hugo Black, as well as talking with his children and his former law clerks, it became quickly apparent that the Black law clerks were also fortunate enough to have enjoyed a warm and lasting relationship with their Justice. While a few former Black law clerks have written about their working relationship between the Justice and his law clerks, this article briefly discusses two main elements of the clerkship experience that have not been fully fleshed out: the Justice’s role as an Alabama-born Pygmalion to a generation of young clerks and the important role that tennis played in the clerkship experience.

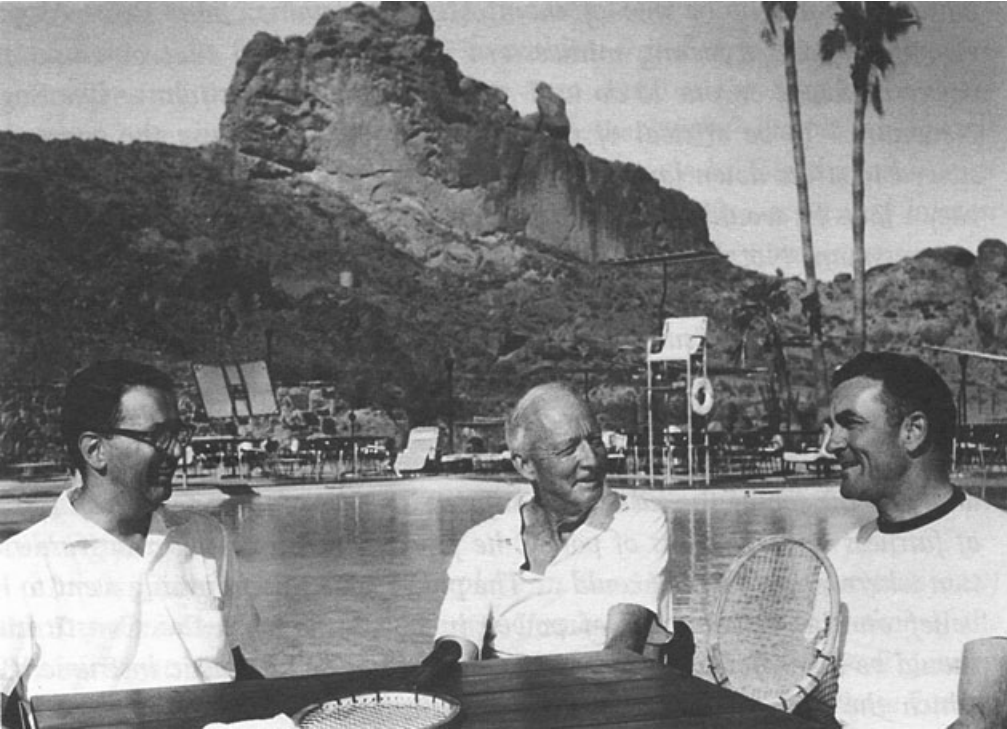
Mr. Justice Black and His Clerks

Like other Justices on the Supreme Court, Justice Black hired law clerks to assist with the work of the Court. Each year, his law clerks would assist in reviewing cert. petitions, doing legal research, and editing opinion drafts. These job duties, however, were only one di-

mension of the Black clerkship. As the Justice himself once remarked to a law-clerk applicant, “I don’t pick my law clerks for what they can do for me, I pick my law clerks for what I can do for them.”¹

And what the Justice could “do for them” extended beyond legal training. Hugo Black, Jr. explains that his father took a personal interest in all of his young clerks and “attempted to change their lives.”² “[H]e was truly interested and concerned about the way they conducted their private lives as well as the way they performed in their professional lives,” adds Justice Black’s daughter, Josephine Black Pesaresi.³ Referring to her father as a “natural born teacher,” Pesaresi explains that the Justice “always looked at the whole person and felt that strength of character, including most predominately kindness, integrity, and humility, must be part of every aspect of anyone’s life.” For Justice Black, the worst transgression a law clerk could commit was being “puffed up” with self-importance.

The law clerks themselves were well aware of the Justice’s interest in their professional skills and personal failings. “The Judge was a delightful teacher and friend, and became almost a second father,” writes former law clerk J. Vernon Patrick (October Term 1955). “He quickly noted my deficiencies and set about to improve me.”⁴ Over the years, the Justice gave his law clerks unsolicited advice on their personal appearance and habits (such as not turning off the electricity when they left a room, talking on the telephone too long, or the pretentious practice of using a first initial in their name), their driving skills, their social graces, and even their weight. In a letter to former law clerk C. Samuel Daniels (the father of mystery writer Patricia Cornwell), Justice Black praises Daniels for resuming recreational tennis. “This is not only a good game at which you are excellent, but from what the grapevine has told me I am inclined to think that you might stand the loss of a few pounds. I cannot imagine the trim, handsome Sam Daniels remaining corpulent. . . .”⁵



Hugo L. Black was photographed after playing tennis with former law clerk John P. Frank and Cavett Roberts at the Racquet Club in Phoenix, Arizona, in 1957.

The advice, however, went beyond the superficial. When interviewing future law clerk Larry Hammond (October Term 1971), Justice Black startled the young applicant by announcing that he had decided to meet with Hammond because he knew that the young man stuttered. Black proceeded to show Hammond several books on stuttering and hypothesized it was a psychological condition. Hammond later humorously recalled that he was literally “tongue-tied” during the interview, since he hadn’t dreamed that his stuttering would be a topic of conversation.⁶

Justice Black also took a great interest in the intellectual development of his clerks, sharing his love of reading with them. Writes former law clerk Daniel J. Meador (October Term 1954):

“Have you read these books?” This question from Justice Black was heard by many a new law clerk

shortly after coming on the job. “These books” usually referred to some of his volumes of Tacitus, Thucydides, Plutarch, or Livy, or to *The Greek Way* [by Edith Hamilton], or to some other historical work he might happen to be reading at the moment. On getting a negative response, as he did all too often, Black would say something like: “Well, they’re your first assignment. What they have to say about human nature and history is more relevant than anything I can think of to the issues now before the Court.”⁷

According to Meador, Justice Black believed that the lessons to be gleaned from these authors served two purposes: not only were the writings relevant in understanding the complex issues facing the Supreme Court, but they would make his clerks better members of



Justice Black, daughter Josephine “Jo-Jo” Black, and law clerks at a gathering at the Justice’s home.

society. “He would rather have had his clerk spend his reading time on literature of that sort than on a book on federal jurisdiction. He seemed to think that his clerks had had enough technical indoctrination in law school.”⁸ Echoing Meador, former law clerk Guido Calabresi (October Term 1958) recalls the Justice telling his clerks that ““you cannot be a lawyer if you haven’t read Tacitus.””⁹

Even illness could not stop the Justice from assigning books to his law clerks to read. During the year that Melford O. “Buddy” Cleveland clerked for Justice Black, the Justice was suffering from an extraordinarily painful bout of shingles. Despite illness, the education of his law clerks continued. “I remember one night in particular when your foot was in such pain that you had to hold it high off the floor,” writes Cleveland. “[Y]et you kept searching for a book for me to read, not for your work but for my education.”¹⁰

As a side note, it should be pointed out that the Justice’s reading assignments were not lim-

ited to his law clerks. Josephine Black Pesaresi recalls that the family milkman had shared his tales of domestic disharmony with the Justice, prompting her father to give him a copy of **The Greek Way**. And when the Justice was hospitalized at the Bethesda Naval Hospital for prostate problems, Pesaresi was amused to discover that her father—who was reading the collected works of Bertrand Russell—had assigned his doctors and nurses reading from the British philosopher and was threatening to give reading quizzes to the medical staff.

Occasionally, Justice Black used the law clerks themselves to make what the Justice deemed necessary changes in their personal habits. After selecting George C. Freeman, Jr. (October Term 1956) to be his clerk, Justice Black told him that he had picked Freeman and his co-clerk (Robert A. Girard) with a dual motive in mind:

He told me later on in the year,
“You know, I picked you and Bob . . .

because you are opposites and I thought that the two of you had something to teach each other. Bob's a very intense, hard-driving, ambitious fellow who married young and has stayed in the books. He's the kind of fellow who just works all the time. Your problem is you've never worked hard in your life. And I figured if I put the two of you together, he'd speed you up and you'd slow him down. And that would be good for both of you."¹¹

Freeman responded: "Well, I said 'Judge, it's like putting the hare and the tortoise in yoke together. But in this case the hare didn't go to sleep. And my little legs are mighty worn.'" It might have been this fatigue that once caused Freeman to take an ill-advised nap on a couch in the Justice's Chambers. "I will never forget waking up from an after-lunch nap on the sofa in the clerks' office just in time to see the Judge tiptoeing in to close the connecting door to his chambers." Rather than admonishing the mortified Freeman, the Justice quietly said "Go right ahead, George. The only reason I am closing the door is that the Chief and I can't hear each other over your snoring."¹²

Justice Black's Pygmalion-like efforts extended to the romantic lives of his clerks. Justice Black once explained to a former law clerk that he could not comprehend why men and women permitted so much time to pass between engagement and marriage. "Many things can happen during that period of time, but the main thing that can happen . . . is that you and the young lady will lose the pleasure of each other's association during that time."¹³ Accordingly, Justice Black pushed his law clerks to get married. Former Black law clerk Marx Leva (October Term 1940) writes that Justice Black was "the man who made me get married—which is a function usually reserved, I believe, for shot-gun carrying 'father-in-laws.'"¹⁴ According to Leva, shortly after his clerkship ended "it came to the Judge's attention that I had (in a rash moment, no doubt)

expressed the intention of getting married after the war, when I would (so I hoped) be back from sea duty." Leva soon received "an irate longhand letter from the Judge, advising me that under no circumstances would such conduct be tolerated by him." Concludes Leva: "Being a compliant fellow (and being under some pressure to the same effect from Shirley), I was married on October 31, 1942, under the watchful eye of the Judge."¹⁵

Yet the Justice had not finished giving Leva advice on love and marriage. "A short time after my marriage, while my LST was still based in Norfolk, I received a second irate longhand letter from the Judge," writes Leva.

[T]he Judge had heard . . . that it was my then intention not to have any children until after my return from sea duty. According to the Judge's letter, this plan of action (or, perhaps, inaction) was even worse, if possible, than my previous plan of not getting married until after my return from sea duty. In his letter, the Judge waxed eloquently on the prospect of my early demise as a result of German submarine warfare or otherwise, and expressed grave doubts, also on my chances of having children, at my advanced age, after the war. All in all, he felt that the facts of the situation—as in any Hugo Black decision—permitted only one outcome—namely, children before sea duty, rather than after.

This time, however, Justice Black's persuasive powers failed to persuade his former clerk and his bride. Concludes Leva: "To sum up . . . my one victory over the Judge—other than my numerous victories on the tennis course, of course—consisted in the post-war arrival of Leo Marx Leva (1946) and Lloyd Rose Leva (1947)."¹⁶

Leva was not the only clerk for which the Justice played cupid, as former law clerks Drayton Nabers, Jr. (October Term 1965) and

Freeman can attest. Regarding Nabers, Justice Black served as a self-appointed godfather to Fairfax Virginia Smothers, the daughter of former United States Senator William Howell Smothers of New Jersey. Both Black and Smothers served together in the United States Senate, and the Justice's first wife, Josephine Black, was Fairfax Smother's godmother. Nabers started his clerkship on July 1, 1965, and by August 9 he found himself on a date with Fairfax Smothers—courtesy of Hugo Black. Nabers met with the Justice shortly before the date, and he recalls the Justice giving him the following advice. "Let me tell you something. Fairfax is a lovely lady. And young women come to Washington to find husbands. She has been here for over two years now—if she wants you, she is going to get you." Adds Nabers: "[A]s predicted by the Judge, we were married in December of 1965."¹⁷

The Justice also worked his match-making magic with Freeman, who writes that "the Judge picked out my wife for me before he or I ever knew she existed."¹⁸

When I left the Judge to go to Richmond he suggested that I ought to find there an attractive cousin of Graham's [wife of Hugo Black, Jr.] for a wife. The first cousin I brought back to Washington for the Judge's inspection was pronounced deficient in only one respect—she had not gone to Bryn Mawr like Graham. Subsequently that cousin decided on another young man and to ease my rejection introduced me to another cousin! Fortunately Cousin Anne had gone to Bryn Mawr. That settled it.

Like many Justices in the 1950s and 1960s, Justice Black also came to the rescue of law clerks whose clerkships were in jeopardy because of their draft status. After having his request for an occupational deferment for law clerk Stephen J. Schulhofer (October Term 1967) denied by two local draft boards, Justice

Black wrote a lengthy letter to the Presidential Appeal Board of the Selective Service System that laid out in great detail the "vital assistance" provided to him by law clerks such as Schulhofer. In the letter, the Justice sharply concludes: "I cannot believe it is more important to the Government to have Mr. Schulhofer in the Army than it is for me to continue in his work with me."¹⁹ Schulhofer received his deferment.

In return for the life lessons imparted by the Justice, the law clerks gave the Justice their undivided loyalty. They defended Justice Black's reputation from the slings and arrows of biographers and critics, and, in the case of former law clerk Neal P. Rutledge (October Term 1951), literally almost took a bullet for the Justice. Rutledge has humorously noted that he "may be the only person who was shot at in the Supreme Court." One night Rutledge found himself working late in Justice Black's Chambers at the Supreme Court. During his late-night session, Rutledge discovered that he needed some files from the secretary's office. Because of the lateness of the hour and the fact that Justice Black was at home, Rutledge decided to save time by cutting through the Justice's personal office. Entering the office, he flipped on a light. As he crossed the room, a rifle shot came crashing through the Justice's window. Rutledge's Marine training kicked in, and he fell to the floor to avoid the unfriendly fire before crawling to a telephone. "Of course, I got on the telephone immediately because it looked like it was an attempt to assassinate the Justice, and I called the Justice at home to warn him," recalls Rutledge. "This was when his first wife, Josephine Black, was in her final stage of illness. The Justice was not worried about himself, but was worried that the news would disturb his wife. So we were all sworn to secrecy." In hindsight, Rutledge does not believe it was an assassination attempt. "I really think—in light of the fact that no other attempt was made on his life—that someone just saw the light come on and started to shoot away." Nevertheless, Rutledge

has the dubious honor of being the only Black law clerk to come under hostile fire during his clerkship.²⁰

On the rare occasions when the Justice was low, it was the law clerks who came to his rescue. This was never more evident than in the months and years following the death of his wife, when his daughter proposed that the clerks live with her father. “My father was lonely, depressed and grieving after my mother’s death,” recalls Pesaresi. “And he was in terrible pain from shingles. I knew my father enough to know that he was the happiest when he was teaching other people. By having the clerks living with him, he could talk about his books and his philosophy.”²¹ Clerks who lived with the Justice included C. Sam Daniels (October Term 1951), Cleveland (October Term 1952), and Charles A. Reich and David J. Vann (October Term 1953). Former law clerk Reich provides a wonderful description of what it was like to live and work with Justice Black.

David and I occupied our own quarters on the ground floor of Justice Black’s beautiful old home at 619 South Lee Street in Alexandria, Virginia. Our windows looked out on a grape arbor and tennis court. Our day began when the Judge, in his bathrobe, knocked on our door to tell us that breakfast, which he prepared, was almost ready. At breakfast, in the kitchen, he liked to read aloud from the *Washington Post*, with many humorous asides. He especially enjoyed the Herblock cartoons. We each had a car, and we rotated cars and drivers for the daily trip to Washington and to the Court. Together we arrived at the Court at 10:00 a.m. Usually we had lunch together in the Court’s public cafeteria. Between 12:00 p.m. and 12:10 p.m. the line was open to Court employees only, and the Judge liked to time our trip downstairs so that we

just made the tail end of the employees’ line. At precisely 3:50 p.m., just ahead of the afternoon rush hour, we departed for Alexandria. Dinner was served at about 6:00 p.m. by Lizzie Mae Campbell, the Judge’s longtime cook and housekeeper. Then the three of us would climb the stairs to the Judge’s second floor study for a session that would last until bedtime. For me, this was the most remarkable and inspiring part of our day together.²²

While, by all accounts, the living arrangements were harmonious, former clerk Cleveland learned the importance of keeping track of his house key:

One night I tried to sneak into his house through a window because I had left my key inside. My friend, Jigger [sic], the dog, attacked me like a lion, and the Judge boomed out from his bedroom window with the voice of ten men, “Who is trying to break into my house?”

The clerks themselves realized the toll that Josephine Black’s death had taken on the Justice. “I do not know whether I have ever sufficiently expressed to you my admiration for the great courage which you showed during the term I worked for you,” writes Cleveland. “You never wavered through illness and numerous defeats.”²³

It is evident that Justice Black’s attempts to teach and educate his law clerks was sparked by the open affection that he felt for “his boys,”²⁴ and evidence of this affection is found in Justice Black’s personal papers. Justice Black once observed that “my clerks stand almost in the relationship of my family to me,”²⁵ and a wonderful example is contained in a letter written by Justice Black to Mrs. George Brussel, Jr., the mother of law clerk Reich. The Justice writes:

Each of my clerks has a secure place in his affections. I think my affection for your Charles began the first time



Justice and Mrs. Black were photographed in his office during his 80th birthday party celebration. From left to right: former law clerk Margaret Corcoran; former law clerk Frank Wozencraft; Wozencraft's son, Tommy; former Holmes law clerk Tommy "the Cork" Corcoran; former New Dealer and Washington lawyer Benjamin V. Cohen; Mrs Elizabeth Black; former law clerk John P. Frank; Frances Lamb, Justice Black's secretary; former law clerk Nicholas Johnson.

he came to see me, when he smiled. There is something peculiarly warm and appealing in his smile. And he has the kind of integrity and humanity about him that I like . . . My prediction is that many people will live happier and better lives because of Charlie.²⁶

Justice Black's law clerks were equally open in their affection for their mentor. "Your influence, as much as that of any man, has made me whatever it is I am," writes former law clerk Nicholas Johnson.²⁷ In a letter to Justice Black, former law clerk Charles F. Luce (October Term 1943) writes:

During the year that I was privileged to work with you I learned more about

many things than in any other comparable period of my life. Your devotion to mankind and to a legal system which will serve mankind has been a constant inspiration in the nineteen years since I was in your office. In making major decisions I have frequently found great help by asking the question: "What would the Judge think I should do?" I know that the other men who were lucky enough to be associated with you feel the same way as I do.²⁸

And in discussing their affection for the Justice, more than one former clerk lamented the loss of the rare gift of their clerkship. "Though it [private practice] is interesting, that rewarding feeling of 'laboring in the cause of

righteousness' is somehow missing," writes Freeman. "I miss it; even though I realize that I could not continue to dwell forever on Olympus."²⁹

As more tangible signs of their devotion, former clerks showered their Justice with gifts on birthdays and holidays. Through the years, the postman delivered a steady stream of hams, avocados, pears, oranges, Wisconsin cheese, peanuts, smoked fish, jam, English walnuts, chestnuts, grapefruit, sorghum, and pickles to the Justice's residence. Former law clerk Sidney M. Davis (October Term 1944) set the standard for gift-giving, and over a twenty-five year period, he presented Justice Black with expensive ties on his birthday and on Christmas. "I can't cease to admire your taste in the selection of ties," admitted Black in a letter to Davis. "I never buy ties that expensive myself and so that may be responsible for the fact that the ones I buy are not equal to yours."³⁰

Justice Black, His Law Clerks, and Tennis

If improving the lives of his law clerks was one constant element of Justice Black's clerkship practices, the second was sharing his love of tennis with his clerks. "The most important things in my father's life were Alabama, the Constitution, his books, and the tennis court—and not necessarily in that order," explains Josephine Black Pesaresi. "A choice between the tennis court and the Supreme Court was a hard choice to make for Daddy." She adds that her father used to say that he could retire from the Supreme Court as long as he had tennis.

Justice Black did not start playing tennis until he was a middle-aged man. Biographer Roger Newman writes that "[t]he Senate doctor had told him that no man in his forties should play singles, he liked to say, so he waited until he was fifty."³¹ Tennis satisfied the Justice's need both for exercise and for competition. "My father was ahead of his time in understanding the importance of exercise.

He did floor exercises every day of his life," explains Pesaresi. "Things like walking and golf bored him, but he loved tennis because it involved competition." Hugo Black, Jr. recalls that the Black children nicknamed their father "the Great Competitor," noting that the Justice "never liked to lose at anything." While Justice Black loved tennis, and practiced endlessly, his children offer different assessments of his skills. While Pesaresi describes her father as a "fair, very consistent" and "accurate" player, Hugo Black, Jr. describes him as "mediocre." "He just hit the ball over the net and figured that most people couldn't hit it back; he didn't hit the ball to a spot, he hit it straight."

Regardless of his skill, his devotion to the game was unquestioned; when the Justice suffered an injury to his right elbow, he taught himself to play tennis left-handed. "Maybe I shall be able to play tennis with your 'left-handed' son when he gets a little older," wrote Justice Black to former law clerk (and frequent tennis partner) C. Samuel Daniels. "Due to a strained right wrist I have been playing with my left hand for the last month."³²

The key to Justice Black's game was endurance, and, in his sixties and seventies, he played tennis four to six hours a day. "He played tennis every day in the summer and he could outlast anybody," recalls Pesaresi. Hugo Black, Jr. echoes this sentiment. "Although he had played some real experts, he would never accept defeat after losing a match but would always insist on playing again until the other guy either quit from sheer exhaustion or was beaten."³³

The law clerks were aware of the Judge's strategy of outlasting his opponents. "The Judge never succeeded in defeating his first law clerk on the tennis court in any set," brags Jerome "Buddy" Cooper (October Terms 1937–1939). "Oh, to be sure, an occasional game was dropped to him, and at the end of every losing set, while the clerk gasped, the Judge always inquired 'Why don't we play just one more set? I believe I could beat you.'"³⁴ Adds

former law clerk George M. Treister (October Term 1950), himself an excellent tennis player and a past captain of the UCLA tennis team:

The Judge is the only man I've ever known who made me feel a coward when I wanted to quit playing tennis after four or five sets. It mattered not that my hand was blistered through the heavy tape; in such cases he never permitted a graceful way out. He held that snow and darkness were the only valid excuses. And these he surely would have enjoyed if he could have established jurisdiction over the weather and the rotation of the earth.³⁵

With these marathon tennis sessions, the law clerks learned the important lesson that “a man needs a strong mind *and a strong body*.”³⁶ When it came to competing with his children, however, Justice Black had his limits. Once his children were able to defeat their father on the tennis court, they never again faced him in singles competition.

Occasionally, Justice Black would show a flash of anger over his own tennis game. “He was then, as now, an even-tempered man, but I learned in time to recognize the days when he had had a bad day on the court—the tennis court,” writes former clerk Sidney Davis. “[S]uch occasions came to be known by me as ‘Tennis the Menace’ days.”³⁷

The Justice's tenacity and competitiveness meant that he fought for every point. Hugo Black, Jr. recalls a match between his father and Treister, who was an outstanding tennis player in his own right. Having grown tired of the Justice's competitiveness, Treister hit a slice shot in such a manner that the only way it could be returned was for the Justice to run into the garden wall (the assumption being that Justice Black would let the shot go). The Justice chased the ball into the wall. Treister hit the shot again. Black again pursued it. An astonished Treister watched as Justice Black crashed into the wall again and again, forcing

the young man to abandon the strategy before the Justice gravely injured himself.³⁸

On the tennis court, even Justice Black's famous sense of courtliness toward women was eclipsed by his competitive nature. Former clerk John W. Vardaman, Jr. (October Term 1965) remembers playing mixed doubles with the Justice against Elizabeth Black (the Justice's second wife) and fellow law clerk Drayton Nabers, Jr. Concerned about the skill of his younger opponent, and the lack of skill evidenced by Vardaman, the Justice gave his law clerk the following advice: “[W]hen the ball comes to you, hit it to Elizabeth.”³⁹

Justice Black built his clay tennis court in the backyard of his Alexandria townhouse. The Justice selected a clay court because it was “the only acceptable style of court, in his view.”⁴⁰ The court shared the large backyard with rose and vegetable gardens, a grape arbor, and a small fish pond, and a table and chairs were placed in the shade of cherry, black walnut, and pecan trees for post-tennis conversation and relaxation. For at least one law clerk, the most memorable part of the tennis matches was the fellowship that followed the marathon sessions. “It wasn't the tennis per se [which enriched the clerkship experience],” explains Vardaman. “It was the opportunity to go out to the house, play tennis, and then socialize with the Judge and Elizabeth. It turned the relationship from professional to personal.” Vardaman remembers that tennis would be followed by wide-ranging conversations between the Justice and his clerks on such topics as Vietnam, politics, constitutional history, the Court, and famous personalities that the Judge had known. “He provided us with a fascinating view of history . . . [I]t made for such a rich experience to sit with the Judge and have so much fun.”⁴¹

The Justice and his law clerks maintained the tennis court, which Nabers nicknamed “the hottest court in the land.” “Weather permitting, and sometimes when it didn't, the Judge would roll and line the tennis court,” recalls Treister. “His displays of energy were overwhelming. I



Hugo Black, Jr., Josephine Black Pesaresi, and the surviving Black law clerks at a 2008 gathering at the Supreme Court.

gained the impression that I was of little real help in this technical task.” Not surprisingly, the Justice would not bow to Mother Nature. “On occasion there was not much incentive [in rolling and lining the court] since it obviously was going to rain before the court could be readied, yet he insisted on the gamble. On these days he seemed to take rain as a personal insult.”⁴²

According to former law clerk Frank M. Wozencraft, Justice Black created a second, temporary tennis court during October Term 1949. Wozencraft writes that the tennis court was located in “the attic” of the Supreme Court, and that the Justice and his clerk played with tennis balls that Supreme Court Marshall Thomas E. Waggaman had “dyed orange in a fruitless effort to improve the visibility.”⁴³ Thus, at least for one Term of court, Hugo Black presided over the highest court in the land.

Justice Black politely suffered through matches with those clerks whose tennis skills

were suspect, although he did take precautions to minimize the loss of new tennis balls. Early into his clerkship, Vardaman was invited to play tennis with Justice Black. Vardaman had never played tennis, and he accepted the Justice’s invitation with “considerable apprehension.” Prior to the match, Vardaman decided to warm up by hitting some practice balls—and immediately missed the first ball lobbed to him. “The Judge did not miss the significance of this inauspicious beginning for he immediately announced that we would play with old balls that day lest one of my errant shots send a new ball over the fence into the neighboring yard.”⁴⁴

The frugal Justice Black was not deterred when a wild tennis shot resulted in a lost ball. Nabers writes of playing a doubles match with outgoing law clerk James L. North (October Term 1964) and the Blacks. During the practice session prior to the game, a tennis ball disappeared into the thick foliage that grew along a brick wall adjacent to the court. “Because the

ball was of an older vintage,” explains Nabers, “it was, without much ado, replaced by another ball from the Judge’s basket.” After a three-hour match, the exhausted law clerks and Mrs. Black sat down to rest in the shade—only to notice that Justice Black had disappeared.

Shortly thereafter Jim and I pushed ourselves from our chairs and began looking for the mysteriously absent Judge to see if we could be of any help. We found him in [an] Atlas-like posture with a ten foot aluminum ladder hoisted on his back. Since I smelt no fires, saw no treed cat, and knew that his peaches were not yet ripe, I was rather baffled. “I’d better get that ball down out of the vines before it slips my mind,” he explained. At once I understood more clearly the work that would be expected of me this year.⁴⁵

Perhaps aware of the Justice’s thriftiness, former clerks used the holidays to make gifts of tennis balls to the Justice. In a letter to former law clerk Treister, Justice Black thanks him for the box of tennis balls—writing “you know where my heart is.” The Justice muses in the letter that he does not know if he has ever played with “nylon and Dacron balls,” but assures his former clerk that “I know I shall enjoy these.”⁴⁶

Even when faced with the most dismal of tennis partners, Justice Black remained undaunted. When Freeman confessed to the Justice that he did not know how to play tennis, the Justice accused him of being “modest” and demanded to see the evidence for himself. “It soon became clear that I was a disaster,” recalls Freeman. “The following Friday, the Judge came into my office and said, ‘George, I have made an appointment for you with the tennis pro at the Army Navy Country Club tomorrow at ten o’clock. Listen carefully and follow his instructions. This will take a number of Saturdays for you to come up to speed.’”⁴⁷ The Judge’s prediction proved to be overly op-

timistic, as Freeman struggled to master the basics. “Thereafter I slowly started getting a few backhands, but my serves remained almost unattainable,” writes Freeman. “Fortunately, in the Fall our work on cases began to pick up and I came to look forward to having to work in the office on Saturdays as a ‘God Send.’”

A few clerks, however, were judged to be beyond the help of a good tennis pro (former law clerk Guido Calabresi (October Term 1968), for one, recalls Justice Black’s “total distain—expressed as politely as possible—of playing tennis with so puny a player as I”⁴⁸) and instead satisfied the Judge’s competitive nature by serving as a fourth for bridge. “We would often play after the Friday conference, and the Judge was often tired because he was losing 5 to 4 on civil liberty cases,” recounts Calabresi. “A good clerk would have loved to help him win [to cheer him up], but he was so competitive that he would not be happy if he knew that you were helping him win.” So Calabresi came up with an ingenious solution that involved former law clerk Reich (October Term 1953).

During my clerkship, we routinely played with Charlie Reich and another individual. What we decided to do—and I don’t know if Charlie realized this—is to arrange so that Charlie would never be the Judge’s partner. We told the Judge that we made this arrangement because Charlie loved the Judge too much, and was too emotional, to be the Justice’s partner, but it was really because Charlie—who is brilliant—is too quixotic for bridge. Thus, by putting Charlie on the other team we made sure that the Judge would always win.⁴⁹

If Justice Black became wise to his law clerks’ affectionate duplicity, he never mentioned it to them.

Conclusion

Today it is common to refer to the Justices' Chambers as "nine little law firms." This description is particularly apt when it comes to the law clerks, whose role has evolved into that of a law-firm associate who is called upon to master complex areas of the law, counsel the senior partner/Justice as to the best method of resolving tricky legal issues, and draft complex legal documents—namely, judicial opinions.⁵⁰ While the modern Justices appear to have cordial relationships with their law clerks and to socialize with them outside of the Court, it is evident that the clerkship models of Oliver Wendell Holmes, Jr., Felix Frankfurter, and Hugo Black are relics of the past. Perhaps this is why the former Black law clerks speak so glowingly of their clerkship experiences—because they were the beneficiaries of a rare and fleeting opportunity to become the students and tennis partners of one of the most remarkable individuals to sit on the Supreme Court of the United States. As a testament to their lasting devotion, the remaining Black law clerks still hold regular reunions where they reminisce about their days with "the Judge" and raise a glass in his honor.

ENDNOTES

*Todd C. Peppers is the author of **Courtiers of the Marble Palace: The Rise and Influence of the Supreme Court Law Clerk** (Stanford University Press, 2006), coauthor with Laura Trevvett Anderson of *Anatomy of an Execution: The Life and Death of Douglas Christopher Thomas* (Northeastern University Press, 2009), and the coeditor with Artemus Ward of the forthcoming book **Behind the Bench: Portraits of United States Supreme Court Law Clerks and Their Justices** (University of Virginia Press, spring 2011).

¹Shelley Rolfe, "Justice Hugo Black: Two Former Law Clerks Recall One of the Court's Towering Figures," *Richmond Times-Dispatch*, sec. F, December 12, 1971.

²Author's interview with Hugo Black, Jr.

³Author's interview with Josephine Black Pesaresi.

⁴J. Vernon Patrick, "Confessions of the Law Clerks: Extracted for the 80th Birthday of Mr. Justice Black," Feb. 27, 1966.

⁵Letter from Justice Black to C. Samuel Daniels, October 18, 1960, Daniels File, Box 459, Personal Papers of Hugo Black, Library of Congress.

⁶Author's interview with Larry Hammond.

⁷Daniel J. Meador, **Mr. Justice Black and His Books** (Charlottesville: University of Virginia Press, 1974), 30.

⁸*Id.* at 31.

⁹Author's interview with Guido Calabresi.

¹⁰Letter from Melford O. "Buddy" Cleveland to Hugo Black, June 28, 1962, Cleveland File, Box 459, Personal Papers of Hugo Black.

¹¹George C. Freeman, Jr., "Confessions of the Law Clerks: Extracted for the 80th Birthday of Mr. Justice Black," Feb. 27, 1966.

¹²*Id.*

¹³Letter from Hugo Black to Guido "Guy" Calabresi, November 4, 1960, Calabresi File, Box 459, Personal Papers of Hugo Black.

¹⁴Marx Leva, "Confessions of the Law Clerks: Extracted for the 80th Birthday of Mr. Justice Black," Feb. 27, 1966.

¹⁵*Id.*

¹⁶*Id.*

¹⁷Author's interview with Drayton Nabers, Jr.

¹⁸Freeman, *supra* note 11.

¹⁹Letter from Hugo Black to Presidential Appeal Board, January 26, 1968, Personal Papers of Hugo Black.

²⁰Author's interview with Neal P. Rutledge.

²¹Author's interview with Pesaresi.

²²Charles A. Reich, "A Passion for Justice," 26 *Tuoro Law Review* 393, 398 (2010).

²³Letter from Melford O. Cleveland to Hugo Black, June 28, 1962, Cleveland File, Box 459, Personal Papers of Hugo Black.

²⁴During October Term 1966, Justice Black hired Margaret J. Corcoran as one of his law

clerks. Corcoran was the daughter of renowned Washington insider Tommy “The Cork” Corcoran, and by all accounts she was a poor pick as a law clerk.

²⁵Letter from Hugo Black to John K. McNulty, Feb. 14, 1971, McNulty File, Box 465, Personal Papers of Hugo Black.

²⁶Letter from Hugo Black to Mrs. George Brusell, Jr., March 12, 1963, Reich File, Box 466, Personal Papers of Hugo Black.

²⁷Letter from Nicholas Johnson to Hugo Black, January 23, 1970, Johnson File, Box 464, Personal Papers of Hugo Black.

²⁸Letter from Charles F. Luce to Hugo Black, October 4, 1962, Luce File, Box 465, Personal Papers of Hugo Black.

²⁹Letter from George C. Freeman, Jr. to Hugo Black, November 6, 1957, Freeman File, Box 462, Personal Papers of Hugo Black.

³⁰Letter from Hugo Black to Sidney M. Davis, March 2, 1970, Davis File, Box 460, Personal Papers of Hugo Black.

³¹Roger K. Newman, **Hugo Black: A Biography** (Fordham University Press, 1997), 302.

³²Letter from Hugo Black to C. Samuel Daniels, October 24, 1957, Daniels File, Box 459, Personal Papers of Hugo Black.

³³Hugo Black, Jr., **My Father: A Remembrance** (New York: Random House, 1975), 110.

³⁴Jerome A. Cooper, “Confessions of the Law Clerks: Extracted for the 80th Birthday of Mr. Justice Black,” Feb. 27, 1966.

³⁵George M. Treister, “Confessions of the Law Clerks: Extracted for the 80th Birthday of Mr. Justice Black,” Feb. 27, 1966.

³⁶Letter from Melford O. “Buddy” Cleveland to Hugo Black, June 28, 1962, Cleveland File, Box 459, Personal Papers of Hugo Black (emphasis in the original).

³⁷Sidney M. Davis, “Confessions of the Law Clerks: Extracted for the 80th Birthday of Mr. Justice Black,” Feb. 27, 1966.

³⁸Author’s interview with Hugo Black, Jr.

³⁹Author’s interview with John W. Vardaman, Jr.

⁴⁰Daniel J. Meador, “Hugo Black and Thomas Jefferson,” *The Virginia Quarterly Review* (Summer 2003): 459–68.

⁴¹Author’s interview with Vardaman.

⁴²Treister, “Confessions of the Law Clerks,” Feb. 27, 1966.

⁴³Frank M. Wozencraft, “Confessions of the Law Clerks: Extracted for the 80th Birthday of Mr. Justice Black,” Feb. 27, 1966.

⁴⁴John W. Vardaman, Jr., “Confessions of the Law Clerks: Extracted for the 80th Birthday of Mr. Justice Black,” Feb. 27, 1966.

⁴⁵Drayton Nabers, Jr., “Confessions of the Law Clerks: Extracted for the 80th Birthday of Mr. Justice Black,” Feb. 27, 1966.

⁴⁶Letter from Justice Hugo Black to George Treister, January 14, 1957, Box 467, Personal Papers of Hugo Black.

⁴⁷Author’s correspondence with George C. Freeman, Jr.

⁴⁸Guido Calabresi, “Confessions of the Law Clerks: Extracted for the 80th Birthday of Mr. Justice Black,” Feb. 27, 1966.

⁴⁹Author’s interview with Guido Calabresi.

⁵⁰Professor Mark Tushnet was the first to suggest that the modern court could be thought of as individual law firms, with the Justices holding the position of senior partners and the law clerks as junior associates. See Mark Tushnet, “Thurgood Marshall and the Brethren,” *Georgetown Law Journal* 80 (August): 2109, 2110–11.

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