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A “Nostalgic” Remembrance of Justice Charles Horowitz

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“Always Appealing” is a column addressing current issues in appellate practice and recent appellate cases written by the lawyers of Smith Goodfriend, PS, a Seattle law firm that limits its practice to civil appeals and related trial court motions practice.



This column is usually about recent developments in appellate practice and case law, but while I was thinking of a column topic I learned that the “theme” for the May Bar Bulletin was to be “nostalgia.” That got me recalling my first experiences in the Temple of Justice,¹ where I was Justice Charles Horowitz’s last law clerk before he “aged out” at the end of 1980.² I have been “recently nostalgic” about those days, and particularly about Justice Horowitz, who was my first mentor:

I caught the appellate bug early, while I was in law school at the University of Washington, and decided I wanted to practice law in the appellate courts. Fortunately, no one told me there was no such thing when I told them I wanted to be an appellate lawyer.³ Instead, my professors suggested I would want to clerk for an appellate judge before going into private practice.

At the top of everyone’s list of potential clerkships was Justice Horowitz. One of seven children of immigrant parents, Justice Horowitz had been born in Brooklyn but had been raised mostly in Seattle. He had graduated from the University of Washington with a B.A. in 1925 and an LL.B. in 1927, having been a Rhodes Scholar. Appellate judging was Justice Horowitz’s “retirement job.”

He had been elected to a six-year term for an open seat on the Supreme Court in 1975, after being one of the first judges appointed to the newly-formed Court of Appeals in 1969, and following a four-decade career at what was then Preston, Thorgrimson, Horowitz, Starin & Ellis.⁴ I knew Preston as one of the “large” law firms in Seattle,⁵ best-known then for its municipal and bond work.

Although I did not know this when he hired me, Justice Horowitz had a long history of championing women lawyers. In 1956, he had “taken a chance” on Elizabeth Binns Fletcher, and hired her as an associate at Preston. Despite graduating at the top of her UW Law School class (while commuting from Lakewood, and raising four children), she had had difficulty finding a job with any Seattle law firm. Betty Fletcher went on to become the first woman partner at Preston (and at any major Pacific Northwest law firm). She “inherited” many of Justice Horowitz’s clients when he went on the bench, until she herself was appointed to the Ninth Circuit by President Jimmy Carter in 1979.⁶

Judge Fletcher used to tell a wonderful story about Justice Horowitz’s brief-writing technique. Justice (then Mr.) Horowitz did not, of course, type; very few lawyers had typewriters in their offices when he was practicing law.⁷ Nor were there any copy machines. When he was drafting the argument section of an appellate brief, Mr. Horowitz would sequester himself in the law library. As he read cases and statutes, he would pull the books with the authority he wanted to use in his brief, put a small slip of paper at the relevant spot in each book, and arrange the books in a line, spine up, down the middle of the long conference table in the Preston library.⁸

Once he was satisfied with his research, Mr. Horowitz would then call his secretary into the library, where he would dictate his brief. The secretary’s job was to take down his dictation in shorthand. Mr. Horowitz would begin at one end of the table, dictate his summary, an argument heading and introductory paragraphs, and then pick up each book, in order, noting when and from which page of the book a quotation should be inserted in the brief, with light pencil marks on the page.⁹ He would then synthesize the authority, apply the law he had recited to the facts of his case, and dictate a conclusion to his argument.

Mr. Horowitz would continue this process for each argument he intended to make in his brief, moving down the table as he used the authority he had selected, in the order he had arranged the books on the conference table. When he got to the other end of the table, he dictated his conclusion (undoubtedly stating the precise relief he was requesting from the appellate court, as we are all told to do), and the brief was done.

The secretary then transcribed the dictation and created a draft, which Mr. Horowitz would edit, once, using a fountain pen for his corrections. The secretary would then type the brief in “final,” producing an original and multiple carbon copies. Mr. Horowitz would sign it, and off the brief (and copies) would go, via U.S. mail, to the Temple of Justice in Olympia.

I can't say I'm nostalgic for the days when a lawyer got only one shot at editing a brief. But I admire the intellectual rigor such a writing process must have required. How much more time would we all spend really thinking about what we wanted to say in our briefs, if we only got to say it once?

After he retired from the state Supreme Court, Justice Horowitz was “of counsel” and had a small corner office at Preston, to which he commuted from his home in Laurelhurst most weekdays. Several times a year, he would treat me to lunch, usually at Crepe de Paris, the “fancy” French restaurant in Rainier Square.¹⁰ He was always eager to know about my progress in becoming an “appellate lawyer,” and we stayed in touch until his death in 1989. Justice Horowitz was an amazing lawyer and judge, a true gentleman, and I was very lucky to have him as a mentor.

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¹ When I talk with appellate lawyers from other states, they often initially look at me with disbelief when I mention that our state Supreme Court sits in a building called the Temple of Justice. I think the name is awesome, as is the building itself. The ToJ was officially completed, at a cost of \$942,230, just over 100 years ago, in 1920. But the Court began meeting regularly in the unfinished building in 1913, the year after construction was begun.

² Justice Horowitz was required to leave the Court, at the end of the 6-year term to which he had been elected in a contested race, at the end of the year in which he turned 75. Wash. Const., art. IV, sec. 3(a) (amend. 25). Justice Horowitz was born on January 5, 1905, and was quite pleased that he was able to stay on the bench until five days before he turned 76.

³ There wasn't. Although an appellate “specialty” has been well-established in California for several decades, it is just in the past 25 years or so that a few Washington lawyers have limited their practices to appeals and related motions practice.

⁴ Justice Horowitz's last case before the Supreme Court appears to have been *Clifford v. State*, 78 Wn. 2d 4 (1970), which held (contrary to his clients' position – he lost) that interest received under installment contracts for the sale of real estate was taxable as part of the gross income of

the business of subdividing and selling real estate. Fun!

5 I haven't been able to determine exactly how many lawyers were at Preston in the late 1970s, but as I recall it was upwards of 30. The firm is now known as K&L Gates.

6 Both Justice Horowitz and Judge Fletcher were also Presidents of the King County Bar Association – he in 1957-58, and she in 1972-73.

7 That was true decades later, as well. When I went to work at Edwards & Barbieri in 1981, after my clerkship with Justice Horowitz, I asked if I could bring in my Smith Corona portable typewriter. I had become accustomed to composing at a typewriter in my former career as a newspaper reporter and editor, and had had a government-issued Selectric in my office in the basement of the Temple of Justice. One of the partners cautioned me against doing so, because I would be mistaken for a secretary, and anyway I would find dictation was a far better way to get my thoughts down. (The firm did supply me with a dictating machine, of course.) He was wrong; I suffered a mild form of writer's block trying to master the wretched machine, until I finally commandeered a cast-off typewriter when the firm purchased hideously expensive Wang word processors several months later.

8 Justice Horowitz once told me that he occasionally slept underneath this conference table as a young lawyer. I'm not sure I believed him.

9 Our senior partner Malcolm Edwards used a similar means of marking passages in the Washington Reports that he wanted "copy-typed" into a brief. The older books in our library still bear many of these penitenti. But that is a story for another time.

10 One of Justice Horowitz's gracious peculiarities was that he would always have "the lady" (me) order, and then order precisely the same thing. That was also his habit when he used to invite me to stroll down to Wagner's, a bakery/coffee shop on Capitol Way near the Temple of Justice, to discuss the cases that had been argued that day. I hope Justice Horowitz liked French onion soup and spinach-and-mushroom crepes (Crepe de Paris) and bearclaws (Wagner's). Unlike Crepe de Paris, which closed in 2007, Wagner's is still going strong. And it is still my favorite place for a post-argument sugar hit.