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TRIBUTE TO OTTO M. KAUS

*Shirley M. Hufstedler**

Otto and I became friends in 1961 when we were Los Angeles County Superior Court judges. When the Fifth Division, Second Appellate District, of the California Court of Appeal was created in 1966, Otto was named presiding justice and Clarke Stephens and I became his associate justices. Two years later, I was named to the United States Court of Appeals for the Ninth Circuit. At President Carter's request, I resigned from the court to become Secretary of Education of the United States. In the interim, Otto was elevated to the California Supreme Court. Otto and I became partners in the Hufstedler firm after Otto retired from the supreme court, and I completed my cabinet service.

In our many years as judicial colleagues and as partners, we enthusiastically fought about cases, but we never ended up disagreeing with each other. Either he persuaded me, or the other way around. We spent countless hours conversing about everything from art to world affairs, but most of the time, we talked about the law.

Some lawyers and law students who are enthusiastic about law are described as "eating it up." That appellation would not be adequate to portray Otto. Otto sipped and savored the law; he kneaded it, crunched it, chewed it, and gulped it. Otto could usually come up with a California case by name and address on almost any point of California or federal constitutional law. However, he did have occasional memory lapses. He would sometimes forget that not everyone was multilingual as he was, and he would come up with a quotation, a line of doggerel, or snatches of an opera assuming that his audience could understand what he was saying in German or French.

When he wasn't reading records of cases and authorities, he was writing, teaching, and talking law. On the bench, he spent many hours dictating opinions in his accustomed style—clad in his

* Associate Justice, Court of Appeal, Second District, Division Five, 1966-1968; Judge, U.S. Court of Appeals for the Ninth Circuit, 1968-1979; U.S. Secretary of Education, 1979-1981; Of Counsel, Morrison & Foerster.

favorite blue cardigan sweater, feet planted firmly on his desk, chair tilted back, and at least one arm waving to emphasize a point or leading a recorded orchestra playing Wagner. He loved teaching students at Loyola Law School, and he never stopped being a teacher for the rest of his life. He was always teaching colleagues, clerks, associates, and friends who needed his meticulous analysis and soaring imagination to work out difficult legal questions.

After Otto joined the Hufstedler firm, he decided that he ought to learn how to use a word processor. The match was an underwhelming success. Several times a day he would hit a snag and bellow to Tina Hinson, his secretary and a computer whiz, for rescue. Even she could not retrieve whole paragraphs of meticulous prose that he had accidentally obliterated from his computer's memory. He persisted in acting as if these mechanical lapses were malicious mischief caused by extraterrestrials.

Such minor disasters did not dim Otto's wonderful, irreverent, hilarious sense of humor. One of the many joys of working with Otto on the same court was to read some very witty sentences that Otto would write in his opinions. Most of them were never seen outside of chambers because they were not meant for publication. The intent was to brighten the days of his colleagues and to lighten the very heavy caseloads for those who were working with him. Occasionally a bit of Otto's humor was mild enough to stay in a filed opinion. One example was a case in which a burglar's *modus operandi* was to try to disguise himself with a false mustache. Otto's opinion commented that Mr. Blackwell's false mustache was not a very good disguise, but then, Mr. Blackwell was not a very good burglar. Otto's humor was not displayed solely for his colleagues' amusement. For some years, he wrote some deliciously pointed and funny lyrics for the Los Angeles County Bar Association's Christmas party. No one who heard those lyrics could have had as good a time listening to them as Otto did in composing and rehearsing his lines.

During the years when Otto, my husband Seth, and I were partners in the Hufstedler firm, and later, when we were all senior counsel in Morrison & Foerster, we had lunch together every day, unless one or another of us was out of town. The luncheon conversation was monolingual, the talk was lively and diverse, but it was still the law and the legal world that dominated the talk that Otto so relished.

Seth and I are blessed with many friends, but Otto is not replaceable. We miss him every day.