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Dean Yelnosky's Post

March 6, 2017

24: Dean Style

Posted by Michael Yelnosky on 03/06/2017 at 02:42 PM



On February 21st I flew from Providence to D.C. for what turned out to be an amazing twenty-four hours.

Shortly after touching down, I entered a hotel function room to meet admitted students and others interested in attending RWU Law. I arrived to find a group of prospective students talking with members of our superb admissions and career development staff. I was able to join those conversations and get to know, in a casual setting, some of the members of the RWU Law Class of 2020.

The next time I surveyed the room I found that the prospective students had been joined by RWU Law alumni, and many of the students were now talking with them about the RWU Law experience. It was now about 6:00, and people were coming from work to join what had morphed into a congenial and spirited cocktail party. Our D.C. alumni in attendance are lawyers at the Department of Health and Human Services, the Federal Maritime Commission, the National Oceanic and Atmospheric Administration, the Justice Department, and in private practice. We were also joined by three current RWU Law students who are participating in our D.C. Semester-in-Practice Program. They are working and learning for credit at the Federal Energy Regulatory Commission, the Office of Congressman David Cicilline, and the Internal Revenue Service. The director of the program, Professor of Experiential Education David Zlotnick, was there with his students.

Joining all of them were eleven alumni, many with guests, who had travelled to D.C. to be sworn in the next day as members of the United States Supreme Court bar. Most are in private practice in New England, and it was

great to catch up with them. Many are my former students, and it was a true pleasure to meet their guests – parents, spouses, children, and friends – people I had not met before.

This was the first highlight of my stay. I looked around the room and saw prospective students; current students; former students and their guests (who ranged in age from about 13 to 65); faculty, and staff. What an interesting and diverse group the law school had brought together!



At the U.S. Supreme Court



The next morning I headed to the Supreme Court for the swearing in of our alumni. I have been there before, but every time I feel a nery excitement. It is like going to a Cubs game at Wrigley Field for me. The building is magnificent, what happens inside is exciting and consequential, and the Justices are as familiar and as mysterious as my favorite players.

What awaited us in the courthouse was a beautiful breakfast in an even more beautiful conference room. Portraits of former chief justices line the walls. In the past we have been joined by a member of our congressional delegation, but Congress was not in session, and they were out of town. I received my script, and we received our instructions from Scott Harris, Clerk of the Court, who was decked out in the traditional morning coat. We posed for another picture and then were led into the chamber for argument.



We were seated in the second row, directly behind counsel table and approximately twenty feet from the bench! After the Marshal called the court to order the justices took their seats. Chief Justice Roberts asked if there were any motions, and soon thereafter I was standing at the lectern addressing the Court. I stuck to the script, I think I pronounced everyone's name properly, and the Chief Justice then administered the oath to our alumni. It was a moving and powerful moment, and I have to say I was bursting with pride.

"MR. CHIEF JUSTICE AND MAY IT PLEASE THE COURT, I MOVE THE
ADMISSION OF THE FOLLOWING ATTORNEYS:

CONNECTICUT (CT)	BRANDON BRUCE FONTAINE
DISTRICT OF COLUMBIA (DC)	JACQUELINE SUSAN ROLLER
MASSACHUSETTS (MA)	KEVIN CHRISANTHOPOULOS CHRISTY MARIE DIORIO TIMOTHY JOSEPH GRIMES
RHODE ISLAND (RI)	JAMIE JOHNSON BACHANT MARISA ANNE DESAUTEL BRIAN ALLEN FELDING MARIANA ELENA ORMONDE JENNA RAE PINGTORK JOELLE CHRISTINE ROCHA PETER FRANCIS SPENCER

I AM SATISFIED EACH POSSESSES THE NECESSARY QUALIFICATIONS.
RETURN TO YOUR SEAT AFTER THE CHIEF JUSTICE GRANTS YOUR MOTION

But the excitement was just beginning. Someone spotted Ivanka Trump and her daughter in the chamber, and many heads turned. But all eyes moved back to the Chief Justice when he recognized his colleagues to announce decisions in cases that had been argued earlier in the term. One, *Buck v. Davis*, was a high profile death penalty case. Chief Justice Roberts explained that a majority voted to allow a black man who had been sentenced to death in Texas to appeal that sentence because his own lawyer put on testimony at his trial that he was more likely to reoffend because of his race. I thought that I could feel in the chamber the anguish of many in attendance that this kind of criminal trial could occur in Texas today.

The Argument

There was one case set for argument, *Kindred Nursing Centers v. Clark*. I will admit, I am a Federal Arbitration Act nerd, but the case really is interesting and the argument was riveting. Put simply, the Kentucky Supreme Court had ruled that an arbitration agreement between a nursing home and a patient that was executed by someone who had the patient's power of attorney was not enforceable. Under Kentucky law, the court

reasoned, a power of attorney does not authorize the waiver of a fundamental right unless that right is set forth with specificity in the power of attorney. The question for the United States Supreme Court was whether that Kentucky law discriminated against arbitration and therefore, as in so many cases the Court has recently decided, preempted by the Federal Arbitration Act.

The case pitted an experienced Supreme Court litigator, Andrew Pincus, with twenty-five appearances in the high court under his belt against Robert Salyer, who was making his debut. Mr. Pincus was relaxed and conversational, and Mr. Salyer, although not as polished, acquitted himself well. In addition to the drama playing out between the veteran and the rookie, the Court was hot. Virtually every Justice asked at least one question, many asked several, and each lawyer was faced with hostile questioning. For example:

MR. PINCUS: Well, I -- I -- I guess two answers. Just to return to this case for a minute, I -- I don't think that's the rule that's being applied. I think it's clear, because the instances of fundamental rights that were identified were one part --

CHIEF JUSTICE ROBERTS: Mr. Pincus, you understand that when your first answer is, let's go to this case, that's not the most compelling response.

* * * *

JUSTICE BREYER: Now, if you're not going to tell me that those are treated exactly alike, I will tell you in my opinion right now you have discriminated against arbitration.

MR. SALYER: It seems to me that the analogue to what you're -- you're proposing would be an instance where the -- the attorney engaged with another party never to have a jury trial with that party pre-dispute . . .

JUSTICE BREYER: No, that isn't this. . . . Of course I'm highly suspicious as you can tell from my tone of voice. What I really think has happened is that Kentucky just doesn't like the Federal law. That's what I suspect. So they're not going to follow it.

The hour seemed to pass in minutes, and just like that, “the case was submitted,” the justices left the bench, and we headed out of the chamber and back to the conference room. Once there we talked about what we had seen and heard, congratulations were offered, we said our goodbyes, and we walked outside into an unseasonably warm and beautiful February day.

I had the chance to talk to Mr. Salyer on the steps of the Court, and he was very generous with his time and exceedingly friendly. He seemed relieved to have the argument behind him (who wouldn't be), and we talked a little about what the Court might do.

I called an Uber, took a ride to the airport, and was headed back to Rhode Island by 3:00. And of course, Sean Spicer was on my flight.

You can't make this stuff up.

