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It began in the summer of 1974, when I was supposed to move from Chicago to Yale. No fool, I spent that summer in Washington, D.C., working on the impeachment. It was Irene who was in New Haven, unloading the crates, trying to convince the kids of the wonders of New Haven by discovering a new pizza restaurant each night, and living in the Covers' third-floor apartment in Davenport College until our house was ready. Bob was teaching at Georgetown that summer, and one evening I took a break from my work to meet the Covers for ice cream and a walk. Diane was with us and graciously feigned some interest in the conversation. Leah was not yet born, but Avi was there in his stroller. He made no pretense. He fell asleep the moment Bob and I started talking about what must have seemed the most boring of all subjects: procedure.

The walk was long and directionless. We must have covered every inch of the Washington Mall, ten times over. Initially, the conversation focused on the impeachment. Our immediate project was to revise the traditional first-year procedure course, and Bob, the true iconoclast in this endeavor, played with the idea of building a new course out of the proceeding then closing in on Richard Nixon. It didn't seem to matter to Bob that the presidential impeachment process had not been used for over a hundred years and probably would not be used for another. Nor did it seem to matter that an impeachment proceeding is the most rarefied form of legal practice imaginable and professionally involves only a dozen or two lawyers in the entire nation. We paused, however, because we were both suckers for the "great case." Our preferred teaching method was to dwell on a single case for a long, long time (some say for an entire semester), using a single fact situation and a single legal encounter to explore the deepest and hardest issues of the law. The Nixon impeachment had not yet produced that kind of case, but the welfare rights movement had. We soon hit on *Goldberg v. Kelly*, and when we did, meta-procedure (as the students named it, to distinguish it from real procedure) was born. That was 1974.

Our last conversation, just a few days before his death, was also on procedure. We had changed our meeting place from the Washington Mall to the streets of New Haven. Bob was wearing his favorite academic attire—a tee shirt, blue shorts, and those funny little bicycle shoes. There was ice cream, though this time only I indulged (I know I failed Bob miserably when it came to one of his passions, baseball, but I listened attentively and responded appropriately whenever he went on about

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Haagen-Dazs Vanilla.). Diane and the kids were not with us this time, but they were very much part of the conversation. Bob seemed to have committed to memory the camp letters from Leah and Avi. He relished each detail and understood that the closing lines of their letters, "Take me home," simply meant "Don't enjoy yourselves too much." Laughing, we sketched in our minds a *New Yorker* cartoon to do the kids' ploy justice. Bob also spoke of how truly special the past two weeks had been with Diane, not that he didn't miss the children, which he truly did, but he never realized, so he said, how much fun it would be to be able to go to the movies any night of the week, or to go out to dinner with friends on the spur of the moment, etc.—the great indulgences of a modern marriage. Not completely certain about the import of the "Take me home" sentences and whether the kids would consider another summer at camp, he wondered aloud how he and Diane might be able to recreate those two weeks. Drawing on my vast experience (my children are just a little older), and having learned to cope with my middle daughter's latest summer adventure, I told him not to worry: After camp, there would be Santa Cruz.

Bob had a very strong sense of priorities and relevance. Diane, Avi, and Leah occupied most of the conversation, and his love for his family informed everything he did and said. But we had gotten together to discuss procedure and managed to spend a few moments on the subject. Judith Resnik joined the collaboration a few years back, and the three of us were readying a casebook for publication. For the most part, this meant shrinking 8,000 pages of material down to about 1,000 (although one helpful colleague, knowing full well what editing meant for us, suggested that we could save a lot of time by selling each copy of the book with luggage wheels.) The most plausible candidate for editing was a massive school desegregation case involving Coney Island. Over the years, *Coney Island's* position in the book kept changing, and so did its length. In this draft, *Goldberg v. Kelly* was Chapter 1 and *Coney Island* Chapter 2, but *Coney Island* had grown to about 300 pages, and there were five other chapters to account for. I was, of course, the problem, since I have been long committed to that now desperate task of trying to convince unsuspecting first-year students that *Coney Island* is the ordinary, typical lawsuit.

Judi had given up on me. She knew I was hopeless and dispatched Bob on the most delicate and difficult of diplomatic missions: He was supposed to convince me that we should take a sentence, or maybe two, out of Judge Weinstein's opinion. Obviously, no analytic point was in jeopardy, but knowing Bob's weak spot, I pleaded with him: Could you imagine? A generation of law students who knew nothing of the cooling sea breezes of Brighton Beach or the fishing fleet of Sheepshead Bay? He looked at me

sideways, with that knowing, impish smile, and we moved on to other subjects.

No casebook ever served a more sublime purpose. My life with Bob filled the years between these two summer walks, the first in Washington in 1974 and the last in New Haven in July 1986, and it revolved around, of all things, a casebook. We were trying to find a way to share with our students some of the excitement we felt for procedure and, for that matter, the law. The setting of our conversations shifted, from the streets to our offices to the corridors of the law school to the faculty lounge and then on to Rudy's for a gourmet lunch (tuna fish and a slice of onion, amidst the pinball machines, Pacman, and the afternoon "soaps"), but no matter what the place, Bob's brilliance and creativity broke through.

Like any truly creative spirit, Bob played with ideas. He was forever trying new things out, and though, as he would be the first to admit, some of his ideas were quite zany, everything Bob said and wrote startled and amazed me. I was never quite sure when he was going to turn the world upside down (as when he turned "redundancy" into a virtue), or when he would breathe life into tired technicalities (as he did when he started talking about "the hermeneutics of jurisdiction"), or when he would make reference to some remote and learned text (like MTV). His ideas were always provocative, insightful, and totally original. To work with Bob was to experience the special pleasures of being a student again, but now to have the world's greatest teacher as your friend. Sometimes I would pinch myself.

Bob was also uniquely passionate and uniquely committed. The time he spent in Albany, Georgia in the early 1960's as part of the civil rights movement was important to him, and he was quite proud of it—at times I did not know which he regarded as the greater badge of honor, the three weeks in jail or the Ames prize, but he wore all his badges modestly. Now and then he would speak of his time with SNCC in Georgia, but not very often, and then always in a casual, self-denying manner. Sometimes a group of students happened to find out about it and would press him for the war stories. Others of us might have seized the moment, but Bob put them off, saying that he was just a kid then, many students had been part of the movement, it was no big deal, etc. Occasions sometimes arose, however, when he just had to speak, in class or in print or on the streets, as with the Local 34 strike or the South African protests. Then the depth and intensity of his commitment became apparent to all who listened.

Bob began his academic career in the midst of the Vietnam War, and turned to slavery and the abolitionist movement, the subject of *Justice Accused*, not as an idle academic exercise, but as a way of understanding the judicial response to draft resistance. His first article was a review of a

book on the slavery period by Richard Hildreth, entitled *Atrocious Judges: Lives of Judges Infamous as Tools of Tyrants and Instruments of Oppression*. Bob's career as a law teacher roughly coincided with the tenure of Warren Burger as Chief Justice, and Bob ended his career on the same note with which he began: *Violence and the Word*. In January 1984 we appeared together on an AALS panel on constitutional interpretation, and I doubt I will ever forget Bob's opening sentence, or its pitch or intensity (which, of course, he later blamed on me and my rhetorical excesses): "Warren Burger is a violent man." Bob found the last fifteen years of Supreme Court history to be "disgusting," to use a term he often used to express disapproval—one of the few that he would have allowed me to repeat in public—and he saw the decisions of the Burger Court as a fair indication of what could be expected from the judiciary. The Warren Court was something of a miracle.

Bob's passion was part of our collaboration and shaped that peculiar scholarly endeavor, too. It no doubt accounted for his constant plea that we give the students only *Goldberg v. Kelly* and ignore the intervening fifteen years of Burger Court due process decisions, which, in effect, reduced *Goldberg v. Kelly* to a formal vestige of another era. Bob's passion was remarkable and, together with his brilliance and creativity, constantly infused the collaboration with a special excitement and made it the great intellectual adventure that it was. But there was another quality of Bob's that was probably even more remarkable and even more essential to the collaboration. That was the way he handled disagreement. Bob not only tolerated and respected disagreement, but oddly enough, seemed especially engaged by it. Like Hannah Arendt and Michael Walzer and the other great theoreticians of participatory democracy, Bob took a rare and unusual pleasure in disagreement, not because he was cantankerous—quite the opposite—but because he recognized plurality as the essential feature of the human condition.

There was much upon which we agreed. We were both drawn to procedure because it raised grand theoretical issues in a tough, technical context and thus seemed to embody the essential tension of the law. We also agreed on the aims of the first-year course and the kind of material to which we wished to expose our students. We even shared some basic political values. *Goldberg v. Kelly* was no accidental hit; for us, it was the culmination of the Golden Age of American Law. No collaboration can survive without this kind of fundamental agreement, but the truth of the matter is that we also disagreed, sometimes passionately, as anyone knows who sat through a faculty meeting, who wandered into the faculty lounge when we were trying to bring *The Structure of Procedure* to completion, or who happened to read *Nomos and Narrative*. There is, to be sure, an

egalitarian streak that runs through both our work, but there is also a difference, as important a difference as that which divided SNCC and the Department of Justice in the 1960s. Of course, the casebook format is more congenial to disagreement than an article—trying to write an article together that spanned *Nomos and Narrative* and *Objectivity and Interpretation* would have required us to defy the law of the excluded middle. But even so, a casebook requires decisions and choices—what to include or exclude, how best to present an entire body of law, and what to say about the material in the notes and commentary. Collaboration involves extending, developing, and refining what two people share in common, but on a day-to-day basis, it also requires resolving differences.

Some people manage disagreement by giving in. Not Bob. Indeed, I can't remember a single instance when Bob compromised a point or position simply for the sake of going forward (my "flexibility" is well known). What Bob did, however, was to listen, carefully and patiently, and then to build on what we shared in common. Sometimes I would think we were at different ends of the earth, but, according to Bob, we weren't really that far apart. Bob brought to these arguments the intellectual gifts I spoke about before, his brilliance, creativity, and immense learning, and though they always dazzled, he was careful never to overwhelm—he gave me room to breathe and to think. Sometimes he even went so far as to respond to himself, by formulating the argument I wanted to make or should have made. His words were precise, and instilled with such an integrity and advanced with such a gentleness as to turn every argument into a conversation. The initial difference was often resolved, but even when it wasn't, when I turned to leave and walk away, I silently replayed the conversation in my mind and often felt, deep, deep inside, that maybe Bob was right.

Surrender was, of course, possible, but with Bob that was a little tricky. Early this spring, Judi, Bob, and I met in New Haven to go through the casebook once again, and a disagreement arose over a technical issue involving TRO's (Does the issuance of a show cause order transform the TRO into a preliminary injunction?). This was an area I was supposed to know something about, and though I tried to ride my authority, both Bob and Judi remained unconvinced. A few weeks later, in the midst of the South African protests, Bob called late one evening to discuss the application for a TRO that was being prepared for the students who were suspended. He wanted me to join that application, and as he went over the legal papers that were being drafted, the same technical issue arose again. This time, however, remembering the sense of uneasiness with which I ended the previous conversation, I had the good sense to surrender: "Anything you decide is fine with me. Just sign my name." Others would have

moved on from there, but not Bob. He seemed a little disappointed. It was well after eleven, but he seemed to want to continue the discussion, in a relaxed and casual way, as though we had stumbled upon one another in the corridor early one morning (in most instances that meant the day—Bob was the greatest schmoozer in the history of the Yale Law School). On the technical TRO issue, Bob still thought I was wrong and was quite clear about that, but he knew I attached great importance to the point, and he wanted to make sure I was totally comfortable with the way he resolved it. I promised to review the papers the next morning.

In speaking of our collaboration and the remarkable qualities Bob brought to it, I have drawn on my personal experiences and shared with you the intimacies, so to speak, of our relationship. But since *Goldberg v. Kelly* meant all things to us at all times, my hunch is that these experiences are not personal to me but are common experiences. Bob was not a public person, in the sense that he did not thrust himself upon you; he started new relationships slowly and shyly. But the truth of the matter is he had lots of collaborators—Steve Wizner, Michael Graetz, Barbara Black, Judith Resnik, Alvin Klevorick, Peter Schuck, Barbara Underwood, and Leon Lipson—all exploring one aspect or another of *Goldberg v. Kelly*, though sometimes under the heading of Jewish Law, Organizational Structures of Procedural Systems, American Legal History, Human Capital, etc. There were many, many sides to Bob, maybe more than to any other member of the faculty, but it was always the same Bob—not just brilliant, but a rare and remarkable combination of passion and tolerance. His love for disagreement, and his unique capacity to see beyond it and to respect those with whom he disagreed, even passionately, were evident to his colleagues and students and formed an essential part of their relationship with him. I also believe that this particular facet of his character and personality is the key to his scholarship and, for that matter, his entire jurisprudence. Bob distrusted the state and proclaimed himself an anarchist—in, as he put it, the classical sense—because of the state's capacity to close off argument and to impose its view through the use of force. In that sense, judges *are* people of violence.

Bob's death is a loss we all share. It will be felt in the lecture halls and in the law journals of the nation. Procedure, or for that matter any subject that might have engaged him, will never be what it could have been. Anarchism never had a more eloquent spokesman. But however great these losses are, and they truly are great, they seem trivial compared to the losses suffered by those who knew the joys of his presence and by those who loved him. In the days since his death, I have often thought of our times together—those long, aimless walks and the ice cream. These were the grand moments of academic life, conversations about ideas that we

believed truly mattered, infused and inspired by a love that brought to our work a certain playfulness.

I know I am supposed to be grateful for what I had, for those ten or twelve years, and I am. But I wanted them to go on and on and on—maybe not forever, for that would be asking too much, but at least long enough for us to grow old together, for there to be another decade or two of long walks, and for me someday, somehow to find that strength I needed but always seemed to lack, until it was too late, to tell Bob all that he meant to me.

James Ponet†

We have heard words spoken about Bob Cover, and we have heard words that Bob Cover spoke. What remains for us is to hear words that Bob heard, words that spoke to him deeply. Bob and I spent some time seeking to grasp the complex implications of the following text, which we studied the day before he died.

To understand this somewhat opaque piece from the Babylonian Talmud, it is necessary to know the following:

1. There is a biblical law that forbids wearing clothing made of a combination of linen and wool, which combination is known as *shaatnez*.
2. The talmudic rabbis made a clear and interesting distinction between legislation that was biblical—i.e., divine in origin—*Mitzvot Mid'Oraita*, and legislation that was rabbinic—i.e., human in origin—*Mitzvot Mid'Rabbanan*. The relationship between these two modes of legislation informs the following selection from tractate *Berachot* (19B).

Rav Yehudah taught in the name of Rav, “If a person discovers that his clothes are woven of *shaatnez*, linen and wool, he must immediately remove them even if he is in a crowded marketplace.” What is the reason for this? Answer: “In the presence of God, human wisdom, understanding, and prudence count for nought” (Proverbs 21:30). Wherever divine authority is spurned, no respect is paid even to a teacher.

But consider the following rabbinic dictum: “Great is human dignity since it actually overrides a biblical prohibition.” Does it actually override a biblical prohibition? Should we not rather apply the rule, “In the presence of God, human wisdom, understanding, and

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