



**Your on the
Street Reporter**



Uyless Black

**America's Capital
A Visit to the Supreme Court**

A Visit to the Supreme Court Report One

April 26, 2006

Hello from Your on the Street Reporter, reporting from our nation's capital. Today, Reporterette and Reporter sat in on a session of the Supreme Court, which proved to be a supreme experience. In this report, I will share some of our experiences with you.

The Supreme Court Building

The Supreme Court building is located a short distance east of the Capitol. In keeping with the themes of older government buildings in the Capital, its architecture is a classical Corinthian style (Figure 1). The place is large, 385 feet by 304 feet, ample room for the Washington Redskins to play a football game. As you might expect, the building is made of marble, taken from quarries in Alabama, Vermont, and Georgia.

Completed in 1935, the Court building cost less than the planned expense of \$9,740,000. Its construction came in under budget and \$94,000 was returned to the U.S. Treasury. Imagine: A government project costing less than the budgeted amount. Times have changed.



Figure 1. The Supreme Court building.

Figure 2 illustrates one of the many beautiful features of the interior design of the Supreme Court building:¹

Two self-supporting elliptical spiral staircases constructed of marble, with bronze railings, ascend five stories from the basement to the library. The Paris Opera House, the Vatican, and the Minnesota State Capitol are among those with similar structures.

¹ "The Supreme Court of the United States," pamphlet, The Supreme Court Historical Society, Revised 8/00, p. 30.



Figure 2. The staircase.

In addition to this stunning staircase, the interior of the building is trimmed with huge doors, ornate fittings, and American white oak. All in keeping with the importance and dignity of its residents: *lawyers*. ...Eh, *justices*.

Aren't Justices Just Lawyers in Long Robes?

I've been thinking about an issue discussed in this part of the report for quite some time. And I'll bet you a rum bun that you, too, have also thought about this topic.

Why do so many people dislike the legal profession, specifically, lawyers? Lawyer quips abound and I am not immune from uttering a few: *We have some friends who are lawyers. We still like them. ... We have two lawyers in our family tree. We keep them on the branches.*

I am not certain why lawyers have fallen so low in America's esteem, but I suspect some of the reasons are:

- Lawyers search for loop-holes in the law to get their client off-the-hook for an offence the client clearly committed---a distasteful practice to some folks. ("What an easy case! The law that puts my murdering client in prison is missing a comma in one of its ten thousand sentences. I'm glad he got off free, and we're bringing a lawsuit against the government for sloppy punctuation.")
- The number of lawyers in America. ("Honey, our Yellow Pages list more lawyer firms than Taco Bells.")

- The billboard advertisements for legal services. ("Dial 1-800-RAW-DEAL and We'll Help You Screw...or Sue Your Neighbor...Whichever you prefer.")
- The complexity of law and our dependence on an expensive attorney to "protect us" from mysterious, legal machinations that have life-altering consequences. ("There'll be a small retainer fee for my services to protect you from losing your home through Eminent Domain. Oh yes, about my fee, bring in your car title the next time you come in.")
- Lawyers make laws. Thus, they create the need for additional lawyers to deal with the very laws they themselves make. ("OK! Let's pass more laws during this session. In this manner, our constituents will read we are active, aggressive lawmakers. As a result of our profligate law making, they will vote us in again to make more laws, because making more laws is considered the fulfillment of our job descriptions. Even better, by writing more laws, we make our society more complex, creating the need for more lawyers---us--to deal with the complexity!")
- With each law passed, we citizens lose the ability to exercise a very important part of our make-up: judgment and common sense.
- Perry Mason, getting fat.

With the exception of Perry Mason's adipose tissue and the notions about judgment and common sense, I exaggerate. But I trust you see an element of truth to these statements. If so, read on. If not, read on anyway, because I need a readership to justify my reported expenses to the IRS and to defend myself in tax court.

For the sake of this discussion, let's assume some of the points above are true. Therefore, I think it fair to say the lawyer profession is not respected because of the perceived low-life nature of the trade.

Interestingly, judges and justices *are* respected. After all, if they were not respected they would not wear distinguished-looking robes. Notwithstanding their regal attire, consider the steps that result in respect and reverence to a formerly disabused profession:

- A judge is a lawyer who has out-lawyered other lawyers. His/her lawyering performance paved the way to Judgedom.
- Moving up the ladder of success, a state justice is a lawyer who has out-lawyered other lawyers. His/her lawyering performance paved the way to State Justicedom
- At the top of the ladder, a Supreme Court Justice is a lawyer who has out-lawyered other lawyers. His/her performance paved the way to Supreme Court Justicedom.

As a consequence of the lawyering hierarchy, those regal, longed-robed folks sitting in the Supreme Court Courtroom are nothing more than very successful lawyers, as summarized in Figure 3.



Figure 3. From a lawyer to a justice.

"The practice of law is a higher calling." I've heard this claim many times---mostly by those doing the practice. I suppose the statement has merit. But often, something is lost between the theory of law and its practice. As mentioned earlier, I think it might have something to do with laws increasingly displacing judgment and common sense, an idea I will explain in a later report.

Anyway, I think the idea of a "higher calling" is debatable. We have laws because humans are base creatures. Laws restrain us, or hold us to task when we cannot be restrained. ...Not what I call a higher calling. But then, I am not a lawyer; I'm a law-challenged citizen who receives bills from lawyers for their services to *isolate* me from the very laws they create.

It's time to sign off in order to file this report to you. But I've done some damage here, so I hope my lawyer relatives will defend me (free, of course) during the upcoming lawsuits from lawyers whom I slandered in this report.

More shortly about The Supremes.

Your on the Street Reporter

A Visit to the Supreme Court Report Two

April 26, 2006

Hello from Your on the Street Reporter, reporting from our nation's capital today and still at the Supreme Court.

Hints for Attending the Supreme Court

Cases that come before The Supremes are heard in the "Courtroom," a grand enclosure, fraught with decorum, and worthy of the "higher calling" nature of the goings-on. Figure 4 shows the front part of the Courtroom, where the Justices sit. Beneath them (figuratively and literally), are tables and chairs for the lawyers who argue the cases. In the back of the room are chairs for the spectators.



Figure 4. The Courtroom.²

Here are four hints for you to make your visit to the Supreme Court more pleasant and efficient. First, make sure you plan your visit when the Justices are in town... a small but important point. Second, call the Court's Marshall Office to make a reservation for a Court session (talk to Marian at 202-479-3000). Otherwise, you will have to queue-up for the visit, which might entail a long wait. Third, allot time to walk around the corridors of the interior of the building---a fine experience awaits you. Fourth, don't forget to buy stuff at the Supreme Court Curio Store---eh, Gift Shop----described later in this report.

I almost forgot hint number five, which is *very* important. Don't do anything inside the Courtroom except stare straight ahead. Assume a contemplative air. Look serious. Be decorous-like. Don't look around much. Why? Because big, serious looking guards----no, let's call them sentinels, because of the dignified atmosphere---stand in front of the audience, continually casting their eyes around the room, like rotating radars, looking for people who are not paying

² Courtesy of Supreme Court Gift Shop.

respectful attention, or who are otherwise acting in a non-decorum-like manner. Every few minutes, the sentinels change places, but they never take their eyes off the spectators.

Because of the decorous nature of the surroundings, the higher calling nature of the debates, and the scary-looking sentinels, for God's sake, don't do crossword puzzles in the Courtroom! Don't even take them out of your pocket or purse. Such an act would be non-decorum-like and undignified. One of the sentinels, while going through Reporterette's personal effects at the security gate into the Courtroom, pointed to a partially-finished crossword puzzle in her purse:

"Ma'am, don't take that out while you are in the Courtroom." ...Is that not dignified?

On two occasions during our stay in the Courtroom, a sentinel admonished two spectators who, from what I could determine, were doing nothing bothersome to anyone else. *Put away that Tic-Tac-Toe game! Uncross your legs. Who knows?*

The postures of The Supremes were not decorous. During the oral arguments, one Justice sat slumped in his chair, occasionally looking at people, but just as often staring at the ceiling as he twirled his glasses around his hand. Having just read a book (*Blink*) on how to read the minds of people by looking at their foreheads, I concluded his forehead looked disinterested. I thought one of those stalwart sentinels should have braced him up a bit, "Suck it up, Justice! How can we maintain decorum with you being such a poor role model?"

The Cases for Today

We heard two cases, each allotted about an hour before the Justices. Both sides were given 30 minutes to present their arguments, which were interrupted frequently with questions and opinions raised by the Justices.

Hill v. McDonough.

The first case dealt with the possible pain of lethal injection administered to condemned inmates. The issue was: Do condemned inmates experience excruciating pain during lethal injections?

The case before the Supreme Court revolved around, "cruel and unusual punishment," which is prohibited by the Eighth Amendment to the Constitution.

Hm. From the legal standpoint, being executed is not cruel and unusual punishment, but being executed painfully might be. Seems like splitting hairs. I won't offer my opinion on the "cruel" aspect of capital punishment, but I do think execution is "unusual." After all, it only can occur once in our lifetime. What could be more unusual than a once in a lifetime experience?

Anyway, part of the discourse dealt with the possibility that the challenge of the inmate (Hill) to the manner in which he was going to be killed was actually a ruse for his trying not to be killed at all. From the perspective of the inmate, that seemed like a sensible way to approach a significant problem in his life.

Maybe the state should give a condemned prisoner the choice of death. Want the gallows? The shooting squad? How about Big Sparky; frying the brain? Talk about pain.

It appeared the Justices were pondering that if Hill prevailed, *any* from of execution could be challenged. I suspect that idea was on Hill's mind when he challenged the law.

It is a confusing issue. Unless the prisoner is unconscious, the very nature of the death penalty cannot avoid inflicting some "cruel" pain on this person. Okay, give the man a sleeping pill and after he is snoring, follow it up with the big sleeping pill. No pain at all.

There is a troublesome aspect to this case. A person who has been condemned to death is sentenced because he has been found to be a bad actor on the stage of life. With rare exceptions, this person has inflicted cruel and unusual pain on his victim(s). This case has found its way to the United States Supreme Court. In its most ironic form: A prisoner who likely inflicted severe, grotesque cruel and unusual pain on his victims is claiming a *few seconds* of experiencing pain is unfair.

Mohawk Industries Inc. v. Williams.

The second case dealt with the Racketeer Influence and Corrupt Organizations Act (RICO). The government wanted to prosecute a company (Mohawk) under the RICO laws, which would have made the case easier for the government to win and a nightmare for the company. This company's contractor---but not the company itself---was falsifying Social Security numbers for illegal immigrants and the government wanted to prosecute Mohawk for the sins of the contractor.

Illegal immigration. All the way to the Supreme Court. The butterfly effect: a butterfly flaps its wings in South America, causing a hurricane in the Gulf. An illegal immigrant crosses over the border, causing a Supreme Court ruling.

The Death of Common Sense

Earlier in this report, I said, "We have laws because humans are base creatures. Laws restrain us, or hold us to task when we cannot be retrained. Not what I call a higher calling."

Maybe yes and maybe no. Perhaps another way to think about the legal profession is this: In a rare moment of clarity, we humans created law and the lawyer in order to save humans from other humans. If true, then law moves up a position or two in my Bottom Ten List of Unloved Professions, because it protects me from---it must be said---you.

Nonetheless, I am troubled by what is happening to America because of the way our legal system has evolved during the past few decades. I believe Americans are evenhanded people. Generally, we want a fair deal for us as well as those with whom we come in contact. Otherwise, we cannot conduct long-term relationships with one another.

The problem? We are trying to guarantee a fair outcome to almost everything we encounter in our lives by the application of regulatory laws at the expense of common laws and common sense. In so doing, laws become more numerous and so complex that we need an increasingly large government apparatus to manage and enforce them. Thus, we continue to strive for an impossible and dangerous goal: Everything will be handled with laws. The actions of our society

and the rules by which we live will be self-executing. Of course, we will need more lawyers to handle the mess we have created.

Thomas Jefferson said, "It is the trade of lawyers to question everything, yield nothing, and to talk by the hour." Well said, Mr. former President. As you imply, with the proliferation of laws, the lawyer can spend a lot of time---and our money---questioning "everything."

Even more troubling: How can my attorney possibly know the fine points of America's laws, which now contain over 100,000,000 words? The Internal Revenue Code alone runs to about 9,000 pages. I have no idea if my tax return is filled to the letter of the law, because I have no idea how to complete the many forms required by the IRS to be as they say, "tax-compliant." I leave the task to my accountant, who is astonishingly competent, and who I daresay does not know the fine points of these arcane, sometime bizarre rules.

Yet, we are told from childhood that, *ignorance of the law is no excuse*. It isn't? Even when those who administer and interpret the law are ignorant of it? I need help. Send in some advice. I'm muddled about this issue, and stuck in the middle of a conundrum...a term my lawyer uses to inform me I am confused and in need of his services.

In a democracy, the law is supposed to function as a pilot, a guide, for a society. It keeps the citizens on an even keel, away from each others' throats. But how can the law act as a stabilizing force if it takes three years of reading to just peruse the statutes?³

Answer? Hire a specialist! "Hi there, I'm Barrister Smith. You've been referred to me by your general attorney. You're in luck! ...as I am the mandarin of esoteric, unfathomable, obscure, inscrutable legal verbiage. My area of expertise is the second clause in the third sentence of Statute 456,444,323.1.

"Please note that I am indeed a specialist...*And a specialist is a person who has come to know more-and-more about less-and-less until he knows everything about nothing*. Therefore, you will need a team of know-nothing specialists to handle your case. Here's the bill for retaining our services. We prefer cash for payment, but we also accept car titles."

One of the best books I have read in the past few years is titled, *The Death of Common Sense: How Law is Suffocating America*.⁴ It is well-written, only 187 pages, and I hope you will read it. Here are a couple passages from the book:

In the decades since WW II, we have constructed a system of regulatory law that basically outlaws common sense. Modern law, in an effort to be "self-executing," has shut out our humanity.

³100,000,000/250 words per minute = 400,000 minutes/60 minutes = 6,666 hours/40 hours in a work week = 166 weeks/52 weeks in a year = 3.21 years!

⁴ Philip K. Howard, *The Death of Common Sense: How Law is Suffocating America* (New York: Warner Books, 1994), 11-12.

The motives were logical enough: Specific legal mandates would keep government in close check and provide crisp guidelines for private citizens. But it doesn't work. Human activity can't be regulated without judgment by humans.

Read the *9/11 Commission Report*. Time and again, America's ability to react to the events of the day was corralled by rules and laws. People were afraid to go outside their rules. If you are a serious couch potato, watch the TV series, *24*. Time and again, Jack Bauer's colleagues will not act because they are bound by rules and laws.

Of course, laws and rules are essential to any functioning society. We've loads of historical proofs to verify that the absence of a respected, legal infrastructure in a society leads to chaos. I am thankful I live in a lawful society. My concern is that I find myself living in a lawful *and* litigious society. As one example, do we need a society that writes an OSHA rule dictating the shape and dimensions of a staircase railing in an apartment building? Must we suffer OSHA inspectors who cite the apartment owner for a one-inch variation (violation) of the railing? Not to mention the tenant who falls down the stairs because he was stone drunk, but successfully sues the landlord because of the OSHA infraction?

Watch the movie, *United 93*. NORAD and the FAA were so bound-up with legal protocol, they were unable to scramble jet fighters until the plane had already crashed.⁵ And the scrambled planes were only partially armed! Our tax dollars at work. Good lord, these organizations could not even execute their basic missions.

Oh well. It's not my problem. I'm retired. My IRAs are protected by law, as long as I keep the funds in CDs, which pay less than the inflation rate, thanks to Uncle Sam.

The Supreme Court Gift Shop

For the most important part of this report, I am pleased to inform you of these facts: (a) I purchased no junk from the Supreme Court Gift Shop; (b) of more importance, I passed by the T-shirts without so much as breaking a sweat, because; (c) the Supreme Court Gift Shop does not sell T-shirts. Out of sight, out of mind.

The lack of T-shirts at the decorous Supreme Court Building backs-up our theory that dignified gift shops---residing in dignified buildings---do not traffic in T-shirts. But to be certain, I asked a clerk: "Do you sell T-shirts?"

- Clerk, "No sir. Only thing close are ladies scarves and men's ties."
- Reporter, "If you don't mind my saying so, you're missing out on a big market."
- Clerk, "We know, but it was decided T-shirts are not in keeping with the Supreme Court."
- Reporter, "That's what I suspected. Not very dignified, eh?"
- Clerk, "Exactly."
- Reporter, "Dignified, like the coasters on your shelves with the photo of the Courtroom ceiling on them. Or the brass-looking scales of justice; the wooden gavels; those Christmas Tree bulbs decorated with picture of the Supreme Court Building; and those..."
- Clerk, "Next in line please."

⁵ And documented in the *9/11 Commission Report*.

It was lunch hour. People were queuing up behind me with their purchases of Supreme Court coffee mugs and miniature spoons. I removed myself from the line.

Before leaving the gift shop, I was tempted to buy a board game titled, "Judge for Yourself: A Game of Real Life Court Room Drama." But once again, I slipped through the net of temptation. One other board game caught my attention; it was titled, "Run for President." Hm, what happened to the separation of powers?

Leaving the Supreme Court Building, we passed by the Capitol on our way to lunch. I snapped the photo in Figure 5. (In a later report, we will visit Congress.) On our walk, we saw a man hitting tennis balls for two dogs to chase and retrieve. The dogs belonged to Senator Kennedy. I know this true fact to be a factual fact, because Ted Kennedy and I---sharing a late evening XO in a downtown DC pub---often exchange quips about our dogs. Actually, I saw the Senator and his dogs on a Sunday morning TV show. I suspect one of his aides was exercising his pets.



Figure 5. A view of the Capitol.

It's a Wrap

The Supreme Court. Decorum? Dignity? Long robes? You bet. No crossword puzzles? Fine by me. We could all benefit from a bit more decorum and dignity. But I think we could also benefit from more common sense and fewer laws.

The outcome of the two cases we heard today, as well as many others, will be decided by The Supremes. Their decisions will be a done deal. That's it my friend. No bullets flying. No riots. No coups.

I'm reminded of the Ethiopian taxi driver who offered these thoughts to me during the 2005 Presidential Inauguration in Washington, D.C. ⁶

The taxi ride from the (restaurant) to our hotel had us once again circumventing security barriers and busses. During this trip, our Ethiopian taxi driver told us why he had come to America and about his experience after arriving here.

⁶ Uyless D. Black, "Presidential Inauguration, 2005, Report One," *Your on the Street Reporter*, 2005, 16.

We talked about today's events, about the election, and the inauguration. He told us he marveled at a country that could hold an election and transfer power with the exchange of congratulations between the factions---instead of the exchange of bullets. We talked of how lucky America was not to have "clans" who were ossified by centuries of customs, grudges, and hatred.

That's America. That's democracy. That's our Republic. And that's why, eventually, in the long run, if we stay our course, if we don't lose our way, if we continue to exercise some common sense, our way of living, and of making laws and governing will prevail.

I will never forget a saying I read many years ago. I've forgotten the source but I remember the exact words, "Democracy is like a raft. You never sink, but damn it, your feet are always wet."

Your on the Street Reporter