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Jack Pope

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CHIEF JUSTICE CALVERT: SIMPLE RULES MADE HIM GREAT

JACK POPE*

I first saw Robert W. Calvert in 1935 from the gallery of the Texas House of Representatives in Austin. At the time, I was a law student at the University of Texas, and he was a candidate for election as Speaker of the House. I had heard about this bright young man who was challenging the establishment. Although he lost that race, he won in 1937.

In 1950, our paths crossed many times. He was running for a position on the Texas Supreme Court, and I was a candidate for the Fourth Court of Civil Appeals in San Antonio. Robert Calvert was a country lawyer from Hillsboro who had earned statewide respect as chairman of the Texas Democratic Party.¹ He won, and so did I.

Robert Calvert easily assumed the role of a judge. He put aside his party leadership and promptly gained the respect of the bench and bar as an industrious member of the court. When I began my tenure there in 1965, he was serving as the court's chief justice.

From the foot of the court's conference table I daily watched Chief Justice Calvert. Unhurried, deliberate, pressing for decisions and votes, patient, attentive, organized, prepared—these were some of my first impressions as I tried to become comfortable with the meetings in which important decisions had to be made week after week.

I had served as a trial and appellate judge for more than eighteen years, but I was surprised at the differences in operation between the Texas Supreme Court and the Fourth Court of Civil Appeals. For example, the intermediate appellate court did not

* Chief Justice (retired), Supreme Court of Texas; B.A., Abilene Christian University; LL.B., University of Texas. Chief Justice Pope retired in 1985 after nearly 40 years of service as a member of the Texas judiciary.

1. Chief Justice Calvert's story is fully recorded in his autobiography, *HERE COMES THE JUDGE: FROM STATE HOME TO STATE HOUSE: MEMOIRS OF ROBERT W. CALVERT* (Joseph M. Ray ed., 1977).

have the burden of deciding applications for writs of error. Granting and denying writs consumed at least one-third of our judicial time and effort. I was accustomed to discussing opinions with two justices. At the supreme court, I had to persuade eight. Nine justices produced three times as many opinions as the three of us on the court of civil appeals.

I soon learned that the supreme court devoted several days each week to court conferences. Monday was "application day," Tuesday was "opinion day," and Wednesday was "argument day." Finding time to study and write an opinion was a problem I had to learn to resolve.

Chief Justice Calvert had the ability to keep things simple. He had some rules, but very few. I do not recall ever reading them. Perhaps his own daily example best displayed these rules. After a while, I realized that his rules for the conduct of the court's affairs were similar to Robert Fulgum's *All I Really Need to Know I Learned in Kindergarten*.²

Chief Justice Calvert's first rule involved punctuality for each court conference, for oral arguments, and for the court's ceremonial occasions. Of course, he always arrived first at all of our meetings. In January 1971, former Governor Price Daniel was scheduled to take the oath of office as a justice of the court. The clerk advised the chief justice that Governor Daniel had not yet arrived. Nevertheless, Chief Justice Calvert looked at his watch and said it was time to begin. We entered the courtroom with all the chairs on the front row empty. The chief justice began the program as it was printed. Smiles appeared on faces throughout the assembly as Governor Daniel and his party walked into the courtroom late. It did not happen again. We needed no printed rules to know what the Calvert rules required.

Another Calvert rule was that each judge should hear what every other judge had to say about every case. Stated in a different way, the rule was "Do not lobby other judges in their offices." With nine judges walking in and out of offices up and down the third floor of the supreme court building, little undisturbed research and writing could be done. This rule also meant that discussion in the court's conference room, with all present, was

2. ROBERT FULGUM, *ALL I REALLY NEED TO KNOW I LEARNED IN KINDERGARTEN: UNCOMMON THOUGHTS ON COMMON THINGS* (1988).

important. Everyone would hear the same arguments and reasons to grant or deny an application or to accept or dissent from an opinion. Each judge was equally responsible for every decision.

Every judge had an equal right to speak about an application or cause. Chief Justice Calvert recognized each justice in succession until we had circled the conference table. He also enforced what has been called the first rule of civil procedure ever announced on the North American continent. An unknown Indian chief created the rule when he said that only one brave may speak at a time. Every judge had the privilege to “pull down” an application or cause and to take the file to his office for study, for writing, or, as Chief Justice Calvert would say, “to agonize” for a few days. Once taken, however, an obligation existed to give that item priority so that it could be returned to conference for disposition.

Extraordinary proceedings had their own special unwritten rules. When a mandamus, prohibition, or habeas corpus proceeding was filed, the file was immediately delivered to a judge in his turn to examine it and to determine whether it was an emergency. When we received notice to go to the conference room, we knew that a case needed prompt attention and an early setting.

To Chief Justice Calvert, court conferences were court confidences. The integrity of our decision making, the arguments, the close votes, and the changes of votes were all privileged. Thus, the conference discussions were always free and open, but spirited arguments sometimes led to hurt feelings. Nevertheless, we all knew that disclosure of our votes on dispositions could result in a miscarriage of justice to the parties or their attorneys. The Calvert rule concerning confidentiality was always observed and respected. This rule also encompassed a requirement that judges leave their arguments and wounded feelings inside the conference room, never to be mentioned outside.

Finally, Chief Justice Calvert expected judges to arrange their affairs to prevent any conflicts with the court's work. Successful performance of judicial services did not include absenteeism. Thus, except for sickness or other emergency, we seldom had an absence from the court.

These represent some of the rules I discovered when I first reached the court. Perhaps Chief Justice Calvert also derived them from the court's practices upon his arrival. Fairness dictated these rules and they were effective. Chief Justice Greenhill carried them

forward during his able administration, and I saw no reason to change them.

Conditions, like courts, change. Different courts proceed in a variety of ways. It was Chief Justice Calvert's fairness, the justices' uniform acceptance of his rules, and his long, untroubled administration that kept our conferences focused upon the work at hand.

Chief Justice Calvert's court produced many landmark cases and hammered out a number of reforms. It was an era when the court declared rules that will govern the civil law for a long time. His own opinions, prepared after diligent research, were consistently written clearly and with forceful reasoning, resting solidly upon settled law. Lean and stripped of distracting dictum, his opinions evidenced scholarship, independence, detachment, judicial restraint, and integrity. He upheld the common law, located the legislative purpose in construing statutes, and wisely took the next step in novel cases or those that moved beyond the periphery of the existing case law.

Chief Justice Calvert always seemed to be guided by the inscription over the portal of the United States Supreme Court building: "Equal Justice Under Law." He never lost sight of his North Star. For his long and honorable career of service, I would put him in my mythical Texas Supreme Court Hall of Fame.