

Thursday, May 15. 2008

### **In New York, it's Geoffrey Holder; in D.C. it's Douglas Ginsburg.**

Imagine Geoffrey Holder, with his commanding voice, arguing before Judge Douglas Ginsburg. I have lived in two celebrity towns: Manhattan and Washington, D.C. In Manhattan, I'd pass Lou Jacobi as he dropped off dry cleaning, Geoffrey Holder (see him in the YouTube video above) on a cold weekend afternoon in Greenwich Village, and Madeline Kahn in the audience waiting to see Linda Hunt and Wally Shawn onstage. In Washington, D.C., the celebrities more often are political figures. A few months before he resigned, I saw Nixon enter the same hotel where Reagan was shot seven years later. Not long after he purportedly overdosed in the eye of the Iran-Contra storm, I saw Robert MacFarlane, Jr., from the opposite direction on 20th St., NW; with a nod, he broke my surprised look focused on how he symbolized a presidency I strongly opposed, while recognizing the common human denominator that his overdose represented. Near the same time, two blocks from my law school, I saw Robert Bork taking up almost the entire front of a small car in which he was driven, shortly before his doomed Supreme Court nomination got under way; stunned to see the man I wanted bounced out of the Senate confirmation room, I surprised myself to ask "How are you?," which received a high-pitched "Fine, fine." Three days before Gulf War II started, I saw Carl Bernstein taking a stroll at the national Mall. He seemed happy to be recognized; I wanted to show him my thanks by leaving things at my gaze. Soon after the Senate bounced Bork, Reagan nominated a forty-one-year-old Douglas Ginsburg to the Supreme Court. His nomination fizzled within days after his admission that he had smoked marijuana while a law school professor. Since then, Judge Ginsburg has remained a judge on the United States Court of Appeals for the District of Columbia. I appeared before him, Judge Kavanaugh, and Judge Brown two days ago, arguing to strike down the Defense Department's First Amendment-violative regulations prohibiting military base newspapers from carrying my client's ads challenging the Bush II administration's military policies. When I learned Judge Ginsburg would be on my panel, I was intrigued that this man who had fifteen minutes of national fame over his Supreme Court nomination would be presiding. When he sat in the center seat at the bench, I took a double take, wondering if it perhaps it was a different Judge Ginsburg; over twenty years has intervened. Judge Ginsburg does not come across as a stoner; he comes across as a conformist who would be prized by Reagan as a judicial appointee were it not for his marijuana smoking background. Of course, when Judge Ginsburg was a Harvard law professor from 1975 to 1983, often it was more non-conformist to refuse to join others for a toke than to do otherwise; able to count on one hand the times I have toked, I know how much easier it would have been for me to have joined in more often. Now we have a presidential candidate, Obama, whose autobiography admits to having snorted blow/cocaine in his much younger years, apparently feeling lost in the ocean without a lifesaver. Had Judge Ginsburg been a Democratic appointee, his marijuana past may have seemed just quaint. The marijuana legalization movement has its share of Republicans, often libertarian-leaning, including the late William F. Buckley and the late Milton Friedman. The late Nixon appointee and conservative William Rehnquist may have found natural back pain relief and avoided his earlier dependency on the overly potent Placidyl had he used medicinal marijuana instead. As is common, I was allotted only ten minutes to argue before this appellate court panel. This expensive courtroom in the courthouse's new wing was as august as they come, with reading prohibited even for lawyers waiting their turn to argue. Had I passed Judge Ginsburg in the hall, I would have bit my tongue to ask my burning question: "What led you to smoke marijuana? To treat orthopedic pain? To enjoy an alternative to a cocktail? To enjoy the communal experience of sharing the herb?" It is a better question to ask someone who will not be deciding my client's case. Ironically perhaps, marijuana was a theme of my appeal before Judge Ginsburg and the rest of this panel, through my argument about the soundness of federal trial judge Paul Friedman's 2004 ruling in *ACLU v. Mineta*, 319 F.Supp.2d 69 (D.D.C. 2004), that the D.C. area Metropolitan Area Transit Authority unconstitutionally prohibited pro-marijuana advertisements in subway stations, where WMATA's decision was based on federal legislation prohibiting such advertisements in transit systems. As I have said many times, if all alcohol drinkers enjoyed marijuana instead, the world would be a much more peaceful and mellow place. Amsterdam anyone? Jon Katz

Posted by Jon Katz in Jon's news & views at 00:00

As for the Obama aside; there is also GW Bush's snort of cocaine. It's everyone; no longer a matter of morals or ideology. Just a simple moral slide of the US.

Anonymous on May 16 2008, 09:41