

## EINO M. JACOBSON AND COLLEGIAL COEXISTENCE

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Eino Jacobson became my colleague in 1975 when as a young and untried appellate judge, I took my seat on the Arizona Court of Appeals. Until that time, all the judges on that court had been male; none had been appointed by merit selection, and all had gone to law school well before the 1960s. I could only dimly imagine how extremely odd I must have looked to my new colleagues; yet Eino swept all such differences aside to welcome me — not as one of the boys — but as one of the judges.

I quickly came to realize how very fortunate I had been to join a court with Eino Jacobson as a leading personality and intellectual force. For the first time, I was working with a person who was not only very, very smart, but who disagreed with every cause in which I had labored so hard in the years before I had joined the bench: civil rights enforcement, equal rights for women, and, of course, the Democratic Party. In my previous life as a litigation lawyer, I had known adversaries, but never one whose office was next door to mine, and whose workload was one I shared.

One who has never known Eino might ask why I considered myself so fortunate to sit with him. There were many reasons, not the least of which was that Eino delighted in intellectual disagreement. He could see the humor in everything, and he prevented anyone from taking himself or herself too seriously. In an appellate judge, this is a rare trait and one to be treasured.

The Arizona Court of Appeals' custom is to have law clerks join the judges in conferences after oral argument. Eino in conference could both disarm and dazzle law clerks, first with his knowledge of Arizona folk lore, and then with his vocabulary reminiscent of an Oxford Don. One particularly tense conference involving a very sensitive case had the law clerks atwitter and judges' nerves on edge. Eino sent a prompt memo expressing surprise that so many had left the conference in a state of "high dudgeon." By the time the clerks, and some of the judges, had scurried to the dictionary to see what the phrase meant, the situation had been defused and the case was able to proceed peaceably.

In my first motions conference, after only a few days on the court, I endeavored to impress my new colleagues by pointing out the difficulties in each individual matter that presented issues no more weighty than whether an extension of time for a particular oral argument should be allowed or the page limits expanded for a particular brief. After two hours Eino finally looked at the ceiling in unfettered exasperation. He pointed out that such conferences

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usually take no more than twenty minutes and, further, if Judge Schroeder proceeded to handle the work in this fashion, it would take her three years to decide her first case.

I learned from that day onward to find out the answers to questions before going into a conference, and never to expect one who is brilliant and also disagrees with you to provide answers that you will necessarily like. Those turned out to be most important principles, and ones learned entirely from Eino.

Eino and I share memories of our years together on the bench, and they include recollections of profound philosophical disagreement. He and I looked back on our record a few weeks ago. To our surprise, there, in the unimpeachable computer data base, truth was revealed: while we had sat together on dozens and dozens of cases, we had filed written dissents from the opinion of the other in only a handful of matters. As Eino put it, "Mary, we may have fought like cats and dogs — but never in public."

There is a lesson there. Our appellate courts need more Eino Jacobsons.