

FOR MY FRIEND HUGH STEWART ROBERTS

On Sunday March 9, 2008, my friend Hugh Roberts died at the age of 71. He was survived by his wife of 46 years, Frances, and two sons Byron and Moultrie both of whom are attorneys. Please allow me to tell you a story or two about my friend Hugh.

Hugh and I met in 1974 when we were both law clerks for Henry Kirkland. The named partners in the law firm were Henry Kirkland, twins Ronnie and Donnie Aaron, and George Alley. The associates were Frank Christian and Ronnie Dodson. Hugh Roberts and I, along with Algie Solomon and Winston Lawton were the law clerks, later joined by Ken Mathews.

The Kirkland, Aaron and Alley law firm was a general practice firm with an emphasis on plaintiff's personal injury and criminal defense, with a fairly large real estate practice. Henry Kirkland had grown up in the Olympia area of Columbia, also known as the "Mill Village". If Henry had what he described as a "lint head" on the jury, there was no possibility that he could lose any jury case that he tried. The defense lawyers never really knew when Henry had a "lint head" on the jury – they not only came from Olympia but later when the mill closed, they spread like Mr. Kirkland's seeds. George Alley was the real estate partner, doing most of developer Michael J. Mungo's work throughout the years. Henry Kirkland was the rainmaker. Ronnie and Donnie Aaron, nearly identical twins, did much of the day-to-day criminal and personal injury work.

Most of the work that Hugh Roberts and I did as law clerks at Kirkland, Aaron and Alley was for Mr. Kirkland. Mr. Kirkland would frequently take Hugh and me to lunch to discuss cases that he wanted us to work on. Hugh and I learned many valuable lessons from Mr. Kirkland, the first being how to handle the check at lunch. When the check came to the table, Mr. Kirkland would quickly grab the check and reach into his pocket pulling out a large roll of bills, typically \$100's. He would then look at Hugh and I and say, "Shucks, I only have a hundred dollar bill do either of you have any smaller bills?" Inevitably, Hugh or I would pull out a twenty dollar bill (typically our last twenty dollar bill) and buy lunch.

When Hugh and I went to lunch with Mr. Kirkland, we typically talked about the cases that we were working on at the time. I recall one very important lesson that Mr. Kirkland taught both of us. He used to call me "Mac". After I had turned in a Memorandum on a case that Mr. Kirkland was going to try, and most if not all of the law was against him, Mr. Kirkland, said "Mac, did I tell you to research the other side of this case?" I replied, "No, sir – I just reported the law as I found it". Mr. Kirkland then said, "Mac, I have already decided what I am going to argue and the positions I am going to take. I am not going to change my position or my argument. You just need to find me one sentence, one word or one footnote to support my position and then I will win the case." I then went back to the books, found an obscure footnote and reported back to Mr. Kirkland. He went on to try the case and, of course, won because he had terrific trial skills and probably had a lint head or two on the jury. From that point on, I knew that any case could be won and it became my job as a lawyer to win cases that I should never win.

Hugh was always a finicky eater and a man of habit and rules. For instance, Hugh never ate chicken. One day I asked Hugh why he did not eat chicken. Hugh then told me a story about Sunday dinners in Winnsboro with Frances' family. Sunday dinner usually consisted of what Hugh described as a "yard chicken". The yard chickens lived under and about the Winnsboro home. Sunday dinner was typically captured on the day of the dinner, which Hugh described in detail. Hugh vowed never again in his life to eat chicken as the taste and aroma of chicken harkened him immediately back to his Winnsboro yard chicken days.

Speaking about food, neither of us had any money at that time. Our "treat" was not to go out to a fancy restaurant or to drink an expensive bottle of wine; rather, we made pizzas from scratch at Hugh's house. We started with making the dough from scratch and then adding ingredients beginning with the tomato sauce, meat, usually sausage or pepperoni, cheese, and then vegetables such as mushrooms and green peppers. We made as many pizzas as we could afford to make. Today, my favorite pizza is hand tossed, with sausage, green peppers and mushrooms – the same kind Hugh and I made.

Hugh and I really did not have two nickels to rub together when we clerked for Mr. Kirkland. Hugh had gone to law school later in life. Hugh was 15 years my senior and was married with two young children when we first began clerking together. Pat and I had married at the beginning of our senior year of college in 1972 and were working our way through law and graduate schools.

After Hugh and I had clerked together and became friends, Hugh asked me if I wanted to also work for him on the side in his private investigation business. The PI work at that time generally involved working on personal injury cases, typically wrecks, taking pictures of the scenes and the wrecked vehicles, sometimes of the victim's injuries, and taking statements from witnesses. We also chased around errant spouses involved in divorce cases attempting to establish evidence of fault, typically adultery. We also worked on some rather substantial personal injury cases beyond the garden variety wreck case. Occasionally we would work for bail bondsmen (typically the wives of most lawyers were bail bondsmen) and we would chase down clients who had jumped bail.

Let me tell you a story or two about our private investigation days.

BOND JUMPERS:

Let me start with recovery of criminals who had jumped bond. Lawyers could not serve as bailsmen and attorney for the same client. At that time, most every attorney who did criminal work had a family member (typically a spouse) who was in the bail bond business. The lawyer would collect the fee for the legal work, as well as the bondsman fee. Typically, this is all done in cash. If the bail bond were set at \$10,000.00, then the Defendant would typically put up 10% or \$1,000.00 to the bondsman who would then stand liable for the full \$10,000.00, which was secured by real estate held in the name of the bail bondsman (i.e. the lawyer's spouse). All went well as long as the client showed up for Court appearances. If the client did not show

for court appearances, then the solicitor's office could estreat the bond up to the full amount pledged. People like us would then be dispatched to find the bail jumper and bring them back to the bar of justice and either eliminate or lessen the amount of bond estreated. Under the U.S. Supreme Court cases that existed at that time, we, as agents of the bail bondsman, were the walls and bars of the jail for the errant Defendant and could virtually do anything to bring them back to face justice. The fleeing Plaintiff had no civil rights at that point.

On one such occasion one of Mr. Kirkland's clients had skipped out and was believed to be in the Washington, D.C. area. I do not recall what the original charges involved, but I believe they were some type of alcohol related offense, such as driving under the influence, tenth offense or something like that.

We were supplied with certified and exemplified copies of the indictment, the bond and the estreatment and bench warrants. The bail bondsman provided us with a photograph of the Defendant as well as background information, the latter of which indicated that he had family in the Washington, D.C. area.

Remember that this was not a time of computers. To find missing persons we had to rely on information provided by the bail bondsman, data from the city directories, telephone books, and sometimes information from utility and telephone companies and from the highway department. Armed with that information, we would then conduct surveillance and, hopefully, find the Defendant.

Hugh and I never considered ourselves heroes in the sense that we typically chose to avoid any type of physical confrontation that could lead to either one of us being physically injured and, most importantly, never wanted to jeopardize our licenses as private investigators or our hoped for licenses to practice law, when and if we were admitted to the Bar after graduation from Law School.

Hugh and I then drove to Washington, D.C. Hugh had discovered an address where the Defendant might be residing with a relative or girlfriend, as I recall. After an eight hour drive, and locating the apartment in a slummy area of Washington, D.C., we observed the Defendant coming and going from that apartment. Knowing that the District of Columbia authorities would not act expeditiously on a South Carolina warrant, we watched and waited until we observed what we thought was a crime in progress, which Hugh then reported via 911. I do not recall exactly what Hugh told the police, but the next thing I knew a SWAT team arrived and our Defendant was arrested and taken into custody. Hugh made friends with the arresting officer who eventually released the Defendant to our custody for return to South Carolina, with the Defendant's consent. They were simply happy to get this character out of the District of Columbia and we were happy to get him back to the State of South Carolina.

Next came the task of actually getting the Defendant back to Columbia. Hugh had other work to do in the Northeast. It was agreed that I would fly back to Columbia with the Defendant, in tow in handcuffs.

Remember that this is well before 9/11 and the security that we now all endure in airports. I purchased a one-way ticket back to Columbia for myself and the Defendant. After boarding the plane, the Defendant asked me if I would take off his handcuffs. I told him that I could not do that but that I certainly could make the ride home more comfortable for him. I then bought him all the liquor that he could drink during the flight. By mid-flight, the Defendant was sleeping like a baby, albeit drunk as a skunk. He was returned to the custody of the authorities in South Carolina, without event.

MASSACHUSETTS LOBSTER:

Remember that I mentioned that Hugh had other business in the Northeast which he tended to while I returned the bail jumper back to South Carolina. Hugh's job was to locate an errant husband who was believed to be having an affair in Western Massachusetts, rather than conducting business as he had reported to his wife. Hugh located the errant spouse in Massachusetts. This occurred near Thanksgiving. After Hugh did the preliminary work, he was scheduled to testify in another case in South Carolina and needed me to take over the surveillance in Massachusetts, which I did. I left my family for the Thanksgiving Holiday and drove to Massachusetts, which was an 18 to 20 hour drive. I completed the surveillance and secured the needed evidence, including photographs of the errant spouse with his girlfriend. My best memory from that trip was Hugh and I eating lobster rolls upon my arrival. After Hugh left, I had lobster rolls for breakfast, lunch, and dinner. I love lobster to this day.

LOW TECH SURVEILLANCE:

Our days of private investigators did not involve high tech devices. There were no cell phones. We had CB radios in our cars. Walkie-talkies were added later. We used Cannon cameras with long range lenses with black and white film which we could "push" for low light photography. For photographing wreck scenes or injuries, we used 50mm lenses which provided photographs close to what the normal eye could see. Hugh had a photographer buddy at the State Newspaper who would develop and print our 8x10 black and white surveillance photographs. Hugh drove an old convertible, a Buick as I recall. I drove an Oldsmobile Cutlass. We both had binoculars and handcuffs procured at a local pawn shop. There were no GPS tracking devices – it was just good old fashioned "follow 'em and not get caught".

It was during this time that Hugh and I met many of the then big time divorce lawyers. That list included Jan Warner, who was then practicing in Sumter, South Carolina the mecca of divorce litigation, John McDougall who had been in Jan's firm when he practiced with Rusty Weinberg before Jan went out on his own, Harvey Golden of Columbia, Kermit King of Columbia, Morris Rosen of Charleston, and others. These attorneys gave us work and were very kind to us. Let me share a few stories that Hugh loved to recount when we would reminisce over the cases with worked on for these attorneys.

THE TRAIN TRESTLE:

One of Hugh's favorite stories occurred when we were surveiling an errant spouse in a fairly rural area. Hugh had the front entry covered, which he did from a distance in his vehicle. I had the rear entrance covered but had to take up surveillance on a railroad trestle over a river in order to have a direct line of sight to the rear entrance without trespassing or being seen. It seemed like the perfect setup; at least until I heard the train sound its horn. By the time I realized what was happening, the train was between me and my only point of escape. Hugh saw me and realized what was happening – I could see him frantically waving his arms. Hugh loved to tell the story of seeing me jump from the train trestle into the river. Luckily I had been a competitive swimmer and was able to fish myself out of the river without drowning. Despite that mishap, we were able to successfully complete the surveillance.

HILTON HEAD #1—THE BEACH & THE DOG:

Another memorable surveillance involved one of our first cases on Hilton Head Island. The lawyer who hired us represented a husband who believed that his wife was having an affair with a local artist who lived nearby, also in a beachfront residence. We cooked up a story whereby the husband told his wife that he would be taking the children to Disney World and would be picking them up at a specific time on a Friday evening, which he did. Hugh and I had set up surveillance. I covered the front and side entrances. Hugh was out in the sand dunes covering the rear entrance. Soon after the husband departed with the children, the wife was out the back door through the dunes and heading up the beach to the artist's home, as expected. Hugh had stripped down to his boxer shorts and was running up the beach pretending to be a jogger. He was able to see the wife entering the artist's home through the rear door. My side of the surveillance was not as smooth. A neighbor had let their Doberman pincher out and I was chased back to my car with the Doberman pincher nipping at my heels. I will forego the details but suffice it to say that I had to change clothes once in the car. Hugh and I then spent the night in the sand dunes adjacent to the artist's home. In the morning there was a Weimaraner dog with a tag indicating that his name was "Leica". Hugh played with the dog in the sand dunes and I shot pictures of Hugh and the dog, keeping the artist's house in focus through the long lens. The errant wife and the artist appeared on the rear veranda, where she classically stretched in her sexy nightie as we shot pictures of Hugh, Leica and the errant spouse with her artist boyfriend. I suppose the highlight of that all-nighter in the sand dunes was having a pizza delivered to the sand dune. As I recall, Jan Warner was the lawyer on that case. When we testified in Beaufort County, South Carolina on that case, the artist remarked to us that he remembered us playing in the sand dune with the dog but did not think anything of it.

HILTON HEAD #2—THE GENERAL:

Our next case on Hilton Head was successful but involved some unexpected travel. We had been dispatched to follow a retired General on Hilton Head Island. We were set up in our two separate cars and talking via CB radio. We had arranged through the client to get passes into the gated plantation to allow us access, which was no easy task. It was early spring and warm on Hilton Head. We were dressed like Hilton Head tourists (shorts and gaudy flowered shirts). When we began the

surveillance we had the errant spouse's photograph, tag numbers, car makes and colors, and expected routine. As we followed the General, switching positions behind him so as to not be detected, the General led us off the island and was headed north on I-95. The wife had expected him to stay local on the Island. No one expected that he would leave the island, much less drive north to Washington, D.C. Hugh and I followed the General all the way to Washington, D.C. without being detected. We constantly switched places during the surveillance, maintaining sufficient distance between our vehicles and the General's vehicle so as to not be discovered. After following the General for eight hours or so, we lost him just inside the beltway that surrounds Washington, D.C. We could not believe it. Hugh suggested that we double back and take the prior exit, hoping that that is where we lost the General. We did that and each went in opposite directions on the exit. Hugh located the General's car in a motel just off that exit. Hugh had great instinct. Surveillance was reestablished.

That evening, the General drove into downtown Georgetown. We saw him park and enter a restaurant. Remember that this is early spring. We are dressed in Hilton Head clothes in Georgetown, where the temperature had dropped down below 40 degrees. We are freezing. Hugh told me to set up the cars pointed in the appropriate direction. Georgetown is a maze a one-way streets. Finally I gave up and simply drove the wrong way on a one-way street in order to get into the position that Hugh thought was best. No sooner had a done that a lady police officer stopped me. I explained that we were two South Carolina law students working a surveillance to make extra money. After hearing the story, and verifying that indeed I held a South Carolina license, she helped Hugh and I get our cars into position and did not ticket either one of us. Hugh and I then spent the rest of the evening huddled behind a hedge peering across the street at the entrance of the restaurant. We felt like two freezing perverts. Eventually the General exited, we surveilled him to the hotel with his girlfriend and we were able to secure the necessary evidence.

THE SWANSEA CHASE:

As I said earlier, Hugh and I did not believe in being heroes or putting our lives or licenses at risk. However, despite our best efforts we sometimes found ourselves in situations that were unintended. One such occasion occurred when we were surveilling a female dump truck driver in a rural area of Swansea, South Carolina. In order to properly cover both entrances to the double-wide mobile home, I set up in a cornfield lying prone in and amongst the corn with a long range lens. Hugh set up on the opposite side of the cornfield, also with a long range lens. It was a long night—sand, bugs and heat. This was both an adultery as well as a custody case. Neither party was supposed to have the children around overnight guests of the opposite sex. In the morning, the children came out of the double-wide and were playing in the yard waiting for the school bus. The sun was coming up behind them and apparently reflected off my camera lens. I could see the children pointing at me. They ran into the double-wide. I took off in the other direction running down the sandy corn rows—I was in slow motion. My car was parked nearly a half mile away. We had been warned that the wife was usually armed and quite volatile. I made it to my car just as she was coming down the dirt road towards my car at a high rate of speed. As the ignition turned, it seemed like an eternity before the big V-8 came to life. When it did, I jammed the shifter down to drive and took off. Hugh was already on the walkie-talkie.

He told me that he was waiting at the fork in the road and that we would split and each go separate directions so that the woman would either give up or only be able to follow one of us. I ended up being the lucky one being followed by the woman. I drove through a cornfield and then out onto the main road. My car was not fast enough. I was going at least 100 miles an hour with this woman directly on my bumper. She drove like a NASCAR driver. I could not shake her. As we got down into the Cayce area, a policeman stopped us. The woman was yelling and screaming at the policeman. I explained to him that I was a private investigator, showed my identification, and recounted what had happened and that I was simply attempting to escape from this crazy woman, who was reported to be carrying a firearm. Eventually she was searched by the police, a firearm found on her person, and she was arrested. Hugh doubled back to clear the double-wide just in time to photograph and see the boyfriend leaving the double-wide. Hugh never gave up. Another successful ending.

THE POLICE COMMISSIONER:

Jan Warner also sent us on a case to North Myrtle Beach. He warned us in advance that the case was against the Police Commissioner of North Myrtle Beach, or someone with some official title like that. He warned that if we got caught, that might be the last time we would be seen or heard from. At first, Hugh and I thought he was joking. As it turns out, he was not joking.

The client had given us information regarding possible rendezvous by the Police Commissioner and his girlfriend. Through several days of surveillance, we were able to put him together with another woman but not sufficiently to prove adultery. Eventually we found the residence where they were going, which was adjacent to a marina. As this was in the winter months, we set up surveillance from the back of a large boat directly behind the residence where we thought the Police Commissioner was meeting his girlfriend. We spent two days fishing with no bait, snapping photographs throughout the day and night. Eventually we were able to catch the Police Commissioner.

THE TENT CASE:

Our domestic surveillance activities were fun and very adventurous. The other work that we did, personal injury type work, was less adventuresome but nonetheless challenging. One case that I remember particularly was the "Tent Case", which was handled by Attorney Frank Draine, who was then with Isadore Lourie's firm, against Sears relating to a tragic incident during a Boy Scout Jamboree when their tent burned killing and maiming several boy scouts. They were young African American boys. Those that survived had the faces that looked like melted candle wax. It was awful and tragic.

It was one of those classic personal injury cases where there was great damages and medical, but liability was lacking because no one could identify the manufacturer of the tent that had burned the boys. By the time Frank Draine had become involved in the case, the site of the Jamboree had become a landfill. Hugh came up with the idea of attempting to locate the place where the boys had been camped through witness interviews and photographs made at the time. After piecing all of that

together, Hugh and I went out to the landfill, which stunk to high heaven. We brought two shovels and began to dig. Hugh unearthed a tent peg. We continued to dig. We then found the rope attached to the tent peg that led to a piece of the tent. At that corner of the tent, which we found, was the Sears label. There was enough material to not only identify the manufacturer of the tent, but also to allow for flammability studies on the tent. That discovery (resulting from Hugh's great ideas and ingenuity) ultimately resulted in a multi-million dollar recovery.

A word about Frank Draine. Frank was trained at Kirkland Ellis in Chicago. He was a great trial lawyer. He learned from the best. I watched Frank waiting to cross a witness, a witness that had just demolished our case (or so I thought). Frank rose to his feet—he then methodically tore the witness apart on cross. No notes. No deposition from which to impeach. Just imaginative questions and great style. I owe my cross examination skills to Frank Draine.

WE BECAME LAWYERS:

After Hugh and I graduated from Law School, and then took the bar exam and were sworn in as members of the South Carolina Bar, we left our clerkships and no longer did the private investigation work. We both had offers to go with bigger law firms. Hugh and I both were of an independent nature and neither one of us thought that the structure of a large firm would be the right thing for either of us (or for the law firms). I recall sitting in our private investigation office on Bull Street pondering what I should do on the afternoon after I was sworn in as a member of the Bar. During our several years as private investigators, I had met many lawyers. After I became a member of the Bar they were very generous in helping me along and sending cases. On the afternoon of the swearing in, I took in two clients. One was a fellow named "Nasty" from Bamberg, South Carolina who was charged with DUI 5th. He was ultimately acquitted, and that story is a story for another day. The other case was an appeal from a defense verdict for a Plaintiff in a medical malpractice case from Greenwood, South Carolina which was a case of *Campbell vs. Berwin*. The defense verdict was reversed on appeal and ultimately Dewey Campbell got a Plaintiff's verdict, also a story for another day. For reasons that I will never know, each of those clients paid me \$5,000.00. By the close of business on the first day (11/76) that I was sworn in as a lawyer, I had made and collected \$10,000.00. I decided that I would put out my own shingle and not join a big law firm.

Hugh took a similar path practicing as a sole practitioner. We saw each other frequently at courthouses. Hugh's practice gravitated towards personal injury and criminal defense. Mine moved to exclusively a divorce practice. In the late 1970's, Frank Draine, for whom we had done the Sears tent work, joined me in my practice. Jan Warner, for whom Hugh and I had done a good bit of domestic surveillance, had a heart attack in the early 1980's and I took on his then partner, Dixon Lee, as my partner and our firm became known as Draine, McLaren and Lee. Eventually Frank went off on his own and Dixon and I have continued to practice together since the early 1980's as McLaren & Lee, with our practice being limited to Family Law matters. Jan Warner later came back to the practice of Law after his heart attack. He specializes in Family and Elder Law. He is the best legal strategist I know. We have

remained very close friends over the years – when you’re in trench warfare, you want Jan in your trench, he is a tough litigator and loyal friend.

As the years went by, I would see Hugh from time to time at the Courthouse. He would take a domestic case here and there. He would collar me and ask me what I thought and I would give him my advice and how I thought the matter ought to be handled. We are both baseball fans and I would frequently see Hugh sitting behind home plate at the USC baseball games. Usually when I saw Hugh at the Courthouse he would be with one or both of his sons, Byron or Moultrie. I could always see the mutual pride and love between Hugh and his sons, though it was not something we talked about-- it just could be seen. I could just tell. Hugh was always a very private person.

Henry Kirkland passed away some years ago, as did one of his partners Donnie Aaron. Ronnie Aaron splits his time between law and golf. George Alley still practices real estate law. Mr. Kirkland helped me try my first big case in Federal Court representing the former president of the Medical School in Charleston against MUSC. Mr. Kirkland helped me not get clobbered by the attorney for MUSC, Morris Rosen, a very able trial lawyer (and best friend of the trial judge, Sol Blatt).

Mr. Kirkland’s children followed him into the law. His daughter, Leslie, is now a well respected Family Court Judge. She is the spitting image of her Dad—tough, hardworking, honest and bright (and tight with a dollar). One of Mr. Kirkland’s sons, Wes, is an attorney. He has a general practice much like Mr. Kirkland’s firm and is well respected.

When Hugh first got ill, not many people knew about it. When I saw Hugh, I could tell that he was angry about being ill. The anger was not about him. Hugh simply never wanted to be a burden on anyone, much less reliant on anyone for his day-to-day needs. He was always very independent and free spirited. I just wish that I had spent more time with Hugh.

That’s all that I can remember at this point. There are many more memories which I hope to add to this piece as they come back. Not long ago, I saw Hugh at the Courthouse with his sons. We stood there reminiscing about some of the stories. I could tell that he wanted his sons to hear those stories. When my case was called, I drew closer to Hugh and put my arm around him. He did not look well but I did not know he was dying. Hugh was a very private and proud person. Sympathy was not something that he wanted or sought. When I went into Court that day, I saw Jan Warner and related to him the fact that I had seen Hugh and reminisced with him. I remarked that I wanted to get a video camera and sit with Hugh and reminisce so that we could bring back and preserve what had been a very important part of all our lives. Unfortunately, Hugh died before those arrangements could be made. I hope you enjoyed these stories. We all loved Hugh and will miss him.

Jim McLaren

March 14, 2008

