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Bart Bartosic: What You See Is Not What You Get

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With "Bart" Bartosic, what you see is not necessarily what you get. Anyone even vaguely acquainted with him knows I am not talking about duplicity; on occasion, Bart can be almost painfully forthright. Nonetheless, on first meeting, most persons are likely to view him as the very soul of *politesse* — perhaps actually too deferential and accommodating. Yet behind that beguiling exterior can be found a backbone of cast iron, a mind like a steel trap, and (to extend the metallic figure) a willingness, when the situation demands, to be as hard as nails in dealing with either ideas or people.

I worked for Bart in my first full-time job as a lawyer in the late 1950s. He was the staff director of a novel instrument of equity, a tripartite "board of monitors" that was set up by the federal district court in the District of Columbia to try to ride herd on Jimmy Hoffa and the Teamsters Union, following Hoffa's disputed election as president of the international.[1] The Teamsters thought they had the impartial chair of the board in their hip pocket because he was an old-line union attorney who had briefly represented the Teamsters themselves. But Hoffa, displaying a total lack of diplomacy, as well as of the natural cunning with which he was often erroneously credited, managed in a series of face-to-face confrontations to so provoke the chair's Irish temper that the latter, abandoning nearly all claims to impartiality, set out to bring Hoffa to heel, if not to bring him down.

Bart reacted in character. Like me, he was making his first full-time foray as a lawyer into the "real world" outside academia. That did not deter him, however, from remonstrating with his strong-willed, impulsive chief. "But sir," he declared in his precise, measured tones, "under the consent decree establishing the board, we have no authority to *order* the Teamsters to do anything; we can only *recommend*." "All right, then," came the growling rejoinder, "take this down instead: '*Order* of Recommendation No. 1'. . . ." Bart was enough of a realist to bow to the inevitable, and the board soon became famous for sev-

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[1] *See* English v. Cunningham, 269 F.2d 517 (D.C. Cir), *cert. denied*, 361 U.S. 897 (1959).

eral dozen "orders of recommendation" covering many aspects of the Teamsters' structure and procedures. Somewhat surprisingly, the union complied voluntarily with a substantial number of these recommendations, much to the benefit, I like to think, of the organization and its members. Eventually, some of our "orders" cut too close to the bone and Hoffa and his cohorts balked. That led to another round of litigation in which the District of Columbia Circuit ultimately vindicated Bart's judgment: the Board had frequently sought to order when it could only recommend.

Two incidents related to the monitorship, one trivial and one significant, epitomize for me the polar elements of Bart's personality — his gentleness and his toughness. Once Bart and I were in the office together, assembling a mass of papers. He was operating a heavy-duty stapler. I made some small request or offered some suggestion; I have long since forgotten what. Bart bore down on the stapler and at the same time uttered a loud and forceful, "No!" He immediately turned to me, obviously distressed: "I'm sorry, Ted, I didn't mean to seem so emphatic. It was only my pressure on the stapler that made me sound that way!"

Much more serious was a career decision Bart made a year or so later. After his stint with the Board of Monitors, he returned briefly to the Washington headquarters of the National Labor Relations Board. And then Jimmy Hoffa, who sometimes (but rarely) knew what was good for him, offered Bart a position as counsel for the Teamsters. Even though Bart would not be going directly from the monitors to the union, I knew his old boss would regard the move akin to high treason, and I told Bart so. In addition, Bart was by now harboring thoughts of an eventual return to law teaching, and we were not so far removed from the McCarthy witch-hunt era but what I feared he might jeopardize his chances with the more timorous schools by an association with the much-maligned Teamsters. I am sure Bart gave my worries all of a moments consideration, and then, as the grand nonrespecter of persons he has always been, he did what he thought he should do. Two million Teamster members were the beneficiaries of a dozen years of his impeccable lawyering.

Curiously, I feel I have been less in touch with Bart's day-to-day activities since he joined me in the academic world in 1971, even though he spent his first decade at Wayne State Law School in Detroit, a mere forty-five miles from Ann-Arbor, and provided

Michigan Law School students with some much-applauded guest teaching. Our relations became more attenuated when he moved to the Coast in 1980, but tales of his prowess as Dean at Davis drifted back from time to time — and confirmed the continuing validity of my thesis concerning his dual hallmarks of gentleness and toughness.

Fortunately, Bart's writings have enabled me to keep abreast of his thinking over the years. The work reflects the man. He does not shrink from tackling the largest, most overarching conceptual themes. Yet he is not above dealing with the practitioner's more mundane concerns. He exhibits the deepest compassion for the disadvantaged. At the same time he can be scathing in his denunciation of shoddy performance, even at the highest levels.

In three substantial articles, Bart, either alone or in collaboration with Professor Gary Minda of Brooklyn Law School, has analyzed the output of the Burger Court from its earliest days to its conclusion. The verdict has often been harsh: "Most of the present Court's significant labor opinions are wanting in logic, style and grace."[2] There has been a persistent complaint. The decisions are "murky and mediocre because the Supreme Court lacks a consistent and coherent theory of labor law."[3] And finally, "if there is one single theme that characterizes the labor law legacy of the Burger Court, it is the failure of imagination and vision in deciding labor law policy."[4]

Perhaps Bart and his co-author are the most focused and eloquent in decrying the "lack of consensus during the Burger Court era on affirmative action doctrine."[5] They attribute this failure to the conflict between those who believe that affirmative action must be confined to "remedying individual discriminatory acts" and those who believe it should extend to "vindicating group rights and . . . correct[ing] societal patterns of injustice."[6] They propose a more factually based approach:

> Instead of choosing between abstract models, the Court should be focusing more of its attention on the realities of racism

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2 Bartosic, *The Supreme Court, 1974 Term: The Allocation of Power in Deciding Labor Law Policy*, 62 VA. L. REV. 533, 600 (1976).

3 Bartosic & Minda, *Labor Law Myth in the Supreme Court, 1981 Term: A Plea for Realistic and Coherent Theory*, 30 UCLA L. REV. 271, 326 (1982).

4 Bartosic & Minda, *The Labor Law Legacy of the Burger Court's Last Term: A Failure of Imagination and Vision*, 28 ARIZ. L. REV. 533, 591 (1986).

5 *Id.* at 553.

6 *Id.*

> and racial hierarchy. Much of the discussion on affirmative action in the Supreme Court simply ignores the stark realities besetting blacks and Hispanics in American society.[7]

Quite correctly, the authors close by observing that the Burger Court produced no "authoritative pronouncement" in seventeen years on the most "significant and serious questions posed by race-conscious affirmative action."[8] The contrast with the Warren Court's handling of school segregation[9] and reapportionment[10] is indeed striking. But in fairness I think the moral dilemma of affirmative action cuts far deeper among fair-minded people, and the public is much less ready here to follow the lead of the Supreme Court.

On a less heroic but still vital level, Bart has had a great deal to say about the effective enforcement of substantive rights. He accurately identifies procedural delay and inadequate remedies as the "principal stumbling block[s]" to effectuation of national labor policy, and calls for a new labor court to review NLRB decisions and for increased use of the contempt power as the solutions.[11] I heartily endorse the latter proposal, having never understood the reluctance of both the Labor Board and the courts to put some flagrant and persistent management (and union) malefactors behind bars just because they wear white collars. But I am still convinced there is a genuine value in having the decisions of specialists reviewed by generalists — especially if the latter are more likely to be considered the more prestigious appointments — and so I remain skeptical about Bart's labor court. Lastly, in keeping with his emphasis upon the actualization of theoretically available claims, Bart and a former colleague from active practice have written one of the most comprehensive and persuasive statements in support of the expansion of group legal services for the middle class, particularly for workers through col-

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7 *Id.* at 555.

8 *Id.* at 591.

9 *See* Brown v. Board of Educ., 347 U.S. 483 (1954) (unanimously decided).

10 *See* Reynolds v. Sims, 377 U.S. 533 (1964) (with only Harlan, J., dissenting).

11 Bartosic, *Labor Law Reform — The NLRB* and *a Labor Court*, 4 GA. L. REV. 647 (1970); Bartosic & Lanoff, *Escalating the Struggle against Taft-Hartley Contemnors*, 39 U. CHI. L. REV. 255, 255 (1972); *see also* Bartosic & Minda, *Union Fiduciaries, Attorneys, and Conflicts of Interest*, 15 U.C. DAVIS L. REV. 227 (1981) (advocating an independent regulatory agency to administer the Labor-Management Reporting and Disclosure Act).

lective bargaining.[12]

A strong strain of thinking in certain elite circles of the contemporary law school world holds that writing addressed primarily to the practicing bar, including well-crafted and eminently useful treatises, is inherently inferior to the loftier flights of the creative imagination that a scholar addresses to a favored few, often only a handful of his or her fellow scholars. Bart is keenly aware of those hierarchical attitudes. He was also the Dean of a truly fine law school, which has achieved much in short order, and undoubtedly aspires to much more. Taking all that into account, I reserve my highest and warmest esteem for a Dean — responsible as he was for serving as a model for many young, ambitious, anxious faculty members — who would dare to produce a mere treatise on American Labor Law.[13] That it happens to be the best up-to-date work of its kind is a nice bonus. Its real message, however, to all young, ambitious, anxious faculty members everywhere, from a Dean who has been through many wars, is simply this: "I am my own man. You be yours."

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12 Bartosic & Bernstein, *Group Legal Services as a Fringe Benefit: Lawyers for Forgotten Clients through Collective Bargaining*, 59 VA. L. REV. 410 (1973).

13 F. BARTOSIC & R. HARTLEY, LABOR RELATIONS LAW IN THE PRIVATE SECTOR (2d ed. 1986); *see also* Bartosic & Hartley, *What To Do When Employers Discriminate Against Unions (Part 1)*, PRAC. LAW., Mar. 1987, at 33; *(Part 2)*, PRAC. LAW., Apr. 1987, at 75.