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FOR LEO LEVIN: *AVE ATQUE AVE*

STEPHEN B. BURBANK†

It is a sad fact of American scholarly life that we tend to celebrate the achievements and influence of our colleagues only when they have retired or died. In following that course, we run the risk that the reader may see in our celebration the Roman admonition, *de mortuis nil nisi bonum*, while the course itself results in *nil bonum nisi de mortuis*.

Anyone who knows Leo Levin knows that he is not the retiring type. Happily, we have passed the point when administrators' fears of invidious discriminations meant that emeritus was the only status one could have after age 65, 68, or 70. As a result, Leo and my equally vigorous colleague, Clyde Summers, are doing what they have always done so well, freed only of the responsibility to attend faculty meetings and to serve on committees. Oh, blessed status! Indeed, in the first semester of his new status, Leo is teaching the normal course load for an entire year, hardly a blessing but a characteristically generous response to a decanal request in an emergency.

Thus, we celebrate the achievements and influence of Leo Levin while he is still very much among us as an active partner in the academic enterprise, continuing to enrich students and colleagues with his wisdom, to delight them with his whimsy, and to embarrass them with his appetite for work.

Drawing a verbal picture of Leo is a task for a wordsmith with talents far beyond mine. The task is akin to sighting an airplane flying at Mach 2 or grounding a greased pig. It is not just that at times the man quite literally has the aspect of a whirling dervish and his speech the quality of Morse Code. It is also that, even in repose, Leo calls to mind the client who longed for a one-handed lawyer. Leo is that individual's worst nightmare, having not just one then another hand, but all the hands of the Hindu Shiva.

The qualities of Leo that would drive the client in search of the one right answer to drink are, of course, qualities that make him a treasure house as a colleague. Particularly for one who (like myself) shares his academic interests and one who (like myself) is not overly afflicted with doubt, Leo operates simultaneously as catalyst and

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brake, a fountain of new ideas and a well of old ideas that should have been tapped but were not. Having the capacity for additional work of the busiest among us, but combining with it generosity so deep-rooted and pervasive as to be of the spirit, Leo is my first and last resort on matters of mutual professional interest. He has preserved me from errors too numerous to count while at the same time encouraging me in the pursuit of a scholarly voice quite different from his own.

It is not given to many of us to be both fountain and well. Indeed, in an age of scholarly pretension and pyrotechnics, there is reason for concern that the water gushing from too many fountains is contaminated and that too many wells have run dry. In articles and books spanning almost fifty years, Leo has not just displayed the acute analytical ability that is essential to good legal scholarship; he has brought to his fields a willingness actually to toil in the field,¹ as well as judgment of exquisite refinement and maturity.² At a time when most proceduralists had "severed the empirical cord"³ and when seemingly not much else was available to save procedural scholarship from condemnation as pedestrian or worse,⁴ Leo engaged in path-breaking empirical work on the administration of justice⁵ and otherwise probed the possibilities of interdisciplinary teaching and scholarship.⁶ Work of this sort, of course, suited his pragmatic cast of mind, as it made him particularly well-suited for leadership of the Federal Judicial Center. But it is only one manifestation of a mind happy, but not content, to play with ideas, interested ultimately in the use of law to improve the human condition. How old-fashioned. How important.

I have written a little about Leo as a colleague and as a scholar. In closing, I wish to add to our celebration perhaps the greatest gift Leo bestows on those fortunate enough to know him: friendship. The life of the scholar can be a lonely life, and young scholars in

¹ See, e.g., A. LEVIN & E. WOOLLEY, DISPATCH AND DELAY: A FIELD STUDY OF JUDICIAL ADMINISTRATION IN PENNSYLVANIA (1961).

² See, e.g., Levin & Amsterdam, *Legislative Control Over Judicial Rule-Making: A Problem in Constitutional Revision*, 107 U. PA. L. REV. 1 (1958); Levin & Leeson, *Issue Preclusion Against the United States Government*, 70 IOWA L. REV. 113 (1984).

³ Burbank, *The Transformation of American Civil Procedure: The Example of Rule 11*, 137 U. PA. L. REV. 1925, 1928 (1989).

⁴ See generally G. HAZARD, RESEARCH IN CIVIL PROCEDURE (1963).

⁵ See *supra* note 1.

⁶ See, e.g., A. LEVIN, EVIDENCE AND THE BEHAVIORAL SCIENCES (1956); Levin & Levy, *Persuading the Jury With Facts Not in Evidence: The Fiction-Science Spectrum*, 105 U. PA. L. REV. 139 (1956).

particular sometimes need the support of a friend more than they do the criticism, even the constructive criticism, of a master.⁷ In providing such support, Leo has shown himself a master in life as he is in teaching and scholarship. His is a fountain of love as it is of new ideas, and in his well of old ideas reposes the wisdom of the ages.

⁷ As a perusal of these footnotes may suggest, much of Leo's scholarly work has been co-authored, and much of that with young people, who thus benefited from both Leo's friendship and his constructive criticism. In that, perhaps, we see the influence of Leo's mentor, the late, beloved James H. Chadbourn. *See, e.g.,* Chadbourn & Levin, *Original Jurisdiction of Federal Questions*, 90 U. PA. L. REV. 639 (1942).

