

A. LEO LEVIN: A FOND TRIBUTE TO THE MASTER OF THE CLASSROOM

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How to do justice to Leo Levin as teacher? Can his enthusiasm, zeal, vitality, deftness, and love for his students be captured on paper? I doubt it. Those who know him must understand my skepticism about capturing with the written word this whirling dervish, who mesmerizes with rapid-fire questions about cases and ever-unraveling "hypos." The perpetually smiling man who inspires us to think for ourselves, makes us laugh with him, and leads us to cry at injustice. For those who do not know his teaching, you have missed something precious, something life influencing, and something so memorable that episodes in a class that I took twenty-eight years ago still endure to this day. Forgive the lack of organization of this self-indulgent, but enormously fond tribute and reminiscence. Whatever its flaws, this essay is about a remarkable and wonderful teacher, one who continues to influence many generations of law students, long after they have passed beyond his caring gaze.

In 1990, I had the great pleasure to have Leo Levin as my colleague, when he and his wonderful wife, Doris, returned to their teaching roots at the University of Iowa.¹ I could not resist returning to his class, and he graciously agreed to let me sit in. He possessed the same brilliance that I recalled from my days as a first-year law student. Levin played the class like a Stradivarius, inquiring whether this or that student could help with one of the perplexing hypotheticals he is so fond of spinning out (do those of you who took Civil Procedure with him recall the problem of service on the malevolent defendant who lobbed cherry bombs from New Jersey across the Delaware River

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¹ Professor Levin's first academic appointment was at the University of Iowa College of Law in 1947. From 1947-1949, Levin taught as an Assistant Professor at Iowa before joining the faculty at the University of Pennsylvania Law School.

into Pennsylvania?).² He invoked the Greek Chorus to bring closure and to emphasize a point. He employed his own particular brand of hand gesturing to encourage a student who was on to something but not quite there (a technique I realize that I have subconsciously plagiarized for my own teaching). Then Levin asked another student whether he could sharpen the answer provided by the prior student who, despite the encouragement of the hand gesturing, never did quite get there. He used humor liberally to develop rapport with the class and to defuse the stress of first-year students, and he utilized his remarkable array of facial gestures—mock surprise, genuine joy, feigned puzzlement, strategic indignation, and magisterial wisdom—to supplement his adroit use of the Socratic method.

Levin's commitment to social justice, policy, and judicial administration suffuses his teaching. He not only raised our consciousness about the way in which Civil Procedure might be employed to protect the downtrodden (e.g., the pre-judgment seizure cases), but also how it might be employed to abuse them (e.g., sewer service³). Levin piloted us towards appreciating the costs of litigation and its effects on access to justice. He repeatedly confronted us with the detritus of administering justice, making it impossible not to be sensitive to those left behind by the current system. Moreover, he knows something that all great teachers must appreciate: how to make those issues resonate with students by demonstrating their effect on their future professional careers. A first-year student contemplating a career as a transactional lawyer might wonder, "Who cares about sewer service?" Levin quickly would answer that question by placing the student in the role of City Bar Association President after a report on the extent of the problem of sewer service is placed on her desk for comment and action. Levin is that very special teacher who continues to teach even after we have left his classroom.

Before empirical examination of the civil justice system became *au courant*, Levin was concerned with the nitty gritty of procedural law and the empirical evidence that might illuminate those effects. Levin brought that interest into the classroom and sensitized us to the real world of litigation: "In our view, the student of procedure should be invited to 'learn from experience' by examining such data as we have

² Andrew Morton kindly reminded me of this hypothetical.

³ See Frank M. Tuerkheimer, *Service of Process in New York City: A Proposed End to Unregulated Criminality*, 72 COLUM. L. REV. 847 (1972), quoted in A. LEO LEVIN ET AL., CIVIL PROCEDURE: CASES AND MATERIALS 19-21 (successor ed. 1992).

on the actual operation of rules of procedure.”⁴ Levin and his mentor-collaborator James Chadbourn were asking students to think about questions such as, “Do hassles over the pleadings operate as a significant cause of delay in litigation?” and “Does compulsory pre-trial of all civil cases help dissolve docket backlogs?”⁵ He made these inquiries before the Civil Justice Institute at Rand and the American Bar Foundation began studying these issues, before even the Federal Judicial Center was established in 1966,⁶ and before concern about delay and the expense of civil litigation became a popular topic.

When Levin teaches seminars, he frequently holds them in his home.⁷ While it is impossible to say that Levin was anything other than “at home” in the classroom, it was a very special pleasure for seminar students to experience his teaching at home, with Doris at his side and a kippah (skullcap) on his head. The bar was continuously open, and Doris always put out a little something to nibble on while Levin led his students in the effort to digest an important issue of civil procedure or evidence. The invitation to debate and analyze the propriety of injunctions, or class actions, or hearsay in the comfort of Leo and Doris’s living room gives those fortunate students in his seminars the opportunity to see his personal side, to realize that, for him, his students are friends and a part of his extended family, and to learn that the pursuit of legal understanding is going to become an important part of the everyday lives of lawyers, as it surely always has been part of his.

Levin’s contribution to the education of lawyers goes beyond the traditional classroom. How many of today’s trial lawyers have benefited from his pioneering work in establishing the National Institute of Trial Advocacy (“NITA”) and serving as its Founding Director? Levin and the other founders recognized that trial lawyering best can be learned—not by watching—but by doing simulated exercises with frequent instructor criticism.⁸ Perhaps more importantly, how many

⁴ JAMES H. CHADBOURN & A. LEO LEVIN, *CIVIL PROCEDURE: CASES AND MATERIALS* ix (1961).

⁵ *Id.*

⁶ See generally JOSEPH L. EBERSOLE, *THE FEDERAL JUDICIAL CENTER: A NONTRADITIONAL ORGANIZATION IN THE FEDERAL JUDICIARY OF THE UNITED STATES* (rev. ed. 1979).

⁷ Arlene Fickler had the privilege of being a student in a Levin seminar, an experience unavailable to me because of Levin’s commitment to public service. I rely on her for this paragraph.

⁸ For an account of Levin’s development of the NITA method, see Harold Cramer, *A. Leo Levin: A Life-Long Commitment to the Law, Legal Education, and the Judicial System*,

nontrial lawyers perform adequately on those rare occasions when they do appear in court because they are beneficiaries of a NITA course? Those familiar with the NITA "method" appreciate how effectively it provides neophytes a substantial repertoire of trial skills in a few short weeks of intensive study or a semester-long law school course. We should not be surprised that Levin's experience as an evidence professor is apparent in the NITA materials and method. "Now I *understand* hearsay," is a refrain that I often have heard from students as they complete a NITA course.

Levin understands another critical characteristic of great teachers—the ability to comprehend where his students' hearts and minds are. Remember the terror of your first law school final examination? Did you, like me, not sleep the entire night before? What a relief to find a parable—yes, a parable—on the first page of the exam:

Sam and Sarah, two young lawyers, were bemoaning their fate. "We always get the toughest problems, are expected to know the lines of authority where they exist, to state the policy considerations, to bring incisive and creative analysis where there is no authority—and to do so forever in a rush, rush, rush . . ."

But their peers were not particularly sympathetic. Indeed, they seemed almost envious.

"Aaaah," they chorused in response, "it's only because you're so good—everyone knows you're the most valuable persons around."

And, before Sam or Sarah could make response, the buzzer rang, summoning them to more work. Moral: Don't worry if the exam seems hard. (And don't worry if it doesn't seem hard!)

Reassurance, praise, concern, and calming advice, with a touch of whimsy to it. Levin also provided a counter-intuitive prescription (at least to first-year law students) that I shamelessly crib and provide to my students in anticipation of their first set of examinations:

If you see an issue, but do not know "the answer," by all means raise the issue or problem. This in itself is valuable. Besides, there may be no answer; there may be only a few scattered precedents, or bits of dictum here and there, and always re-

138 U. PA. L. REV. 325, 326-27 (1989). Cramer, who collaborated with Levin to develop the first NITA teaching materials, summarizes: "Leo was the father, midwife, and visionary of creating this outstanding program. Its success today is the result of his leadership and labor." *Id.* at 327.

member: well-reasoned argument is itself a precious thing.

Levin's mastery of the classroom begins with his natural entertainer qualities. We often observed during those frequent first-year bull sessions that if he had not become a law teacher or a rabbi, he could have had his name in lights as a comedian on the marquee in the Borscht belt of the Catskills. He knows how to play an audience as well as anyone. He genuinely respects and likes his students and continually demonstrates that respect and fondness.⁹ He motivates his students not by intimidating them but by making the classroom an exciting, stimulating forum, in which teacher and student are engaged in a shared enterprise. We prepared, participated, and thought harder than we had before, because he created a respectful and caring, yet challenging, environment, in which we knew he was fully devoted to our education.

This devotion to teaching, the classroom, and his students was brought home to me during his visit at Iowa in 1990. During one of our conversations, he asked: "Does it still hurt?" Not understanding what he meant, I pressed him. He explained that James Chadbourn, late in his teaching career, had discussed with Levin the phenomenon of forgetting pain: Many teachers become inured to an individual class (or even several) that goes poorly—after all, students make good scapegoats for poor classes, and some believe our scholarship to be what is truly important for professors. But, as Kent Syverud pointed out, as legal academics, the lasting impact that we leave on the world is almost surely the impact on our students, not the legacy of our scholarship.¹⁰ Levin appreciates this and, forty years after his teaching career had begun, still felt the acute pain of a class that had not met up to his exacting standards.

This tribute, I fear, will not please Leo Levin. He is far too humble, sincerely self-effacing, and embarrassed by praise to accept comfortably this effort, however true. Even if I cannot entirely please him—thereby replicating a number of my classroom performances of three decades ago—at least I can return a modicum of the respect, concern, devotion, and, yes, love that this master of the classroom has bestowed upon generation after generation of law students.

⁹ Kent Syverud, providing sage advice to beginning law teachers, has written: "If your students know that you like and respect them, they will forgive a great deal in the classroom." Kent D. Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. LEGAL EDUC. 247, 248 (1993). Levin needs no forgiveness for anything he has done in the classroom.

¹⁰ See *id.* at 259.

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