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Tribute

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TRIBUTE

John M. Burman

In the fall of 1988, my then law partner, Phil Nicholas, and I walked into Judge Brimmer's courtroom in Cheyenne to select a jury in a lender liability case in which we represented the plaintiff. Among the assembled venire was Gerry Gallivan. When his turn came to answer the judge's question of whether he knew any of the parties or their lawyers, Gerry replied that he knew me, Phil, and every other lawyer in our firm. The other lawyer assumed, I'm sure, that Gerry would then say that he should not sit on the case because of those relationships. Instead, he replied that knowing us would not affect him; he believed he could be a fair and impartial juror. Knowing Gerry, we believed him. The lawyer for the defendant, who was from out of state, did not. He used a peremptory strike to take Gerry off the panel, preferring a juror who did not know the plaintiff's lawyers. It was a mistake. Gerry's presence on the jury may not have changed the result, a plaintiff's verdict, but the lawyer's mistake was to think that Gerry would not have been an impartial juror. He would have been excellent. The last thing he would ever have done would have been to favor the plaintiff because he knew the plaintiff's lawyers. We knew that if we could prove our case, fine for our client. But if we had not been able to, fine for the defendant.

The following spring, I joined the faculty at the College of Law. As the years passed, I came to know Gerry well. My earlier impression of Gerry as a man of intelligence and integrity was reinforced, and leavened by almost daily doses of Gerry's remarkable humor. I can't count the number of times his wry comments left me marveling, and wishing that I'd said that. It also became clear to me that Gerry possessed a rare combination of wit and wisdom.

From time-to-time, many of us fall prey to the urge to try to incorporate humor into law school exams, a notoriously difficult feat since the audience is seldom in the mood for levity. Most of our efforts enjoy the limited success they deserve. Gerry, however, was the master of law exam humor. His exams invariably included puns, word-plays, entertaining asides, and cleverly named parties. Fortunately, several of his exams survive.

Gerry taught Remedies for decades. In December of 1992, students were asked to address a dispute between neighbors. The exam began by setting the scene:

In 1961, the year Roger Maris hit 61, the first year of Camelot, and

a year filled with other notable events, Marvin Gardner bought a piece of land in Las Vegas. (If Los Angeles is the city of the angels, is Las Vegas the city of Vegas?). After building a cute Cape Cod cottage amidst the sage and cacti, he began the process of landscaping. Scouring (that's a good word) the local garage sales, he assembled a menagerie of kitsch unknown west of Cleveland, to wit: deer, ducks, flamingos, et al.

The reference to "61," of course, is to the then major league baseball season record of 61 home runs, one of the many baseball allusions in Gerry's exams. My favorite is the criminal conspiracy Gerry created one year involving the theft of goods, which were then fenced and resold. Joe Tinker was the thief, he passed the goods to his fence, Johnny Evers, who, in turn, sold them to Frank Chance. That allowed Gerry's exam to include the sentence that the stolen items went "from Tinker to Evers to Chance," perhaps the most widely recognized utterance in baseball history.¹

One of my favorites is Gerry's 1994 Remedies exam. The main character was "Bob Crotchety . . . a man of many convictions (mostly misdemeanors)" who was Christmas shopping. Although Bob was "parsimonious, i.e., cheap," he found an exercise treadmill he thought his son, "Tiny Tim," would appreciate. The treadmill was made by "Sell-You-Light Corporation" and was on sale. Bob had only one concern. He had read "Alf Nadir's" expose on exercise equipment, "Unsafe At Any Speed," and Bob was worried about the treadmill's safety. Nevertheless, "[p]rincipal overcame principle when [Bob] reflected that it had been years since anyone had called his teenage son 'Tiny,' except sarcastically. In the true Christmas spirit, he put aside his moral compunctions and sought the bargain."

Words were not just a means of communication for Gerry. They came with a rich history of their own, and could convey multiple meanings. The protagonist in one of his exams, for example, worked for "a petty criminal, Robbin Leech, who worked for Barb Weyer, the biggest fence in Texas." In the same exam, a lawyer sought a TRO, but found that the judge "was unavailable, i.e. on the thirteenth tee."

Gerry's wit was not confined to the written word. He had a knack for oral quips, as well. I recall the faculty meeting where we were discussing the relative merits of faculty candidates. One was described as "the safe choice." He was said to be "solid, reliable, and dependable." The descriptions caused Gerry to wonder aloud: "are we hiring a faculty member or

1. For those of you who are not baseball aficionados, Joe Tinker, Johnny Evers, and Frank Chance were Hall of Fame ballplayers who played shortstop, second base, and first base, respectively, for the Chicago Cubs in the early 1900s. *THE BASEBALL ENCYCLOPEDIA*, 753, 879, 1548 (9th ed. 1993). They are generally regarded as the greatest double-play combination in baseball history.

buying furniture.”

Behind the wit was wisdom. For years Gerry and I had adjacent offices. Most mornings Gerry would appear for “an audience,” as he referred to our meetings. Our conversations ranged widely, covering everything from the most recent academic absurdity at the College or the University, to the latest curtailment of Constitutional rights by the Wyoming or United States Supreme Court. And since Gerry was an inveterate defender of Constitutional rights, the courts’ all-to-common, in his view, pronouncements of “harmless error” generally inspired both informed and biting commentary.

I wish I’d sat in on one of Gerry’s classes. Many former students have told me of Gerry’s excellence in the classroom. And although I never took a law school class from Gerry, I learned more from him than I did from any of the professors I did have. Perhaps the most important lessons I learned were about commitment and passion, and how to teach and practice law with both. While there are those who devalued Gerry as a law professor because he made no pretense of wanting to contribute to the proliferation of academic “scholarship,” Gerry wrote more, and more important scholarship than any legal scholar I know.

Each year, the Defender Aid Program produced fifteen or twenty appellate briefs, all prepared under Gerry’s strict scrutiny. Most of the time, Gerry also carefully prepared his students to appear for and present oral argument in the Wyoming Supreme Court. When they couldn’t, Gerry appeared and argued.

Gerry first appears as attorney of record in *Miller v. State*, a 1973 opinion of the Wyoming Supreme Court.² Opposing counsel in *Miller* was Wyoming’s Attorney General, Clarence A. Brimmer, soon to be named to the federal bench. Twenty-five years, eight Attorneys General,³ and 246 opinions later, Gerry makes his last appearance in *Pierson v. State*.⁴ Opposing counsel in *Pierson* was Attorney General William U. Hill, the newest member of Wyoming’s Supreme Court. Appropriately, Gerry went out a winner; the court reversed Mr. Pierson’s conviction for indecent liberties with a minor because of erroneous evidentiary rulings, improper prosecutorial argument, and faulty jury instructions. The *Pierson* brief, as the hundreds which preceded it, was not considered “scholarship.” Yet each brief contained thoroughly researched and meticulously crafted legal arguments, often on issues of first impression. Collectively, they represent a huge

2. *Miller v. State*, 508 P.2d 1207 (Wyo. 1973).

3. The other Attorneys General were Dave B. Kennedy, V. Frank Mendicino, John J. Rooney, John D. Troughton, Dave Fruendenthal, A.G. McClintock, and Joseph B. Meyer.

4. *Pierson v. State*, 958 P.2d 1119 (Wyo. 1998).

amount of legal research and scholarship, with an impact far greater than most of the countless articles which appear each year in the hundreds of law reviews which choke law libraries. And in addition to the Wyoming Supreme Court opinions, Gerry is the attorney of record in four reported opinions by the United States Court of Appeals for the Tenth Circuit.

Standing alone, Gerry's numbers are remarkable. Even more remarkable is the collective significance of those 251 reported opinions. They represent a substantial part of the criminal law jurisprudence of this State. By any measure, Gerry's influence on Wyoming's jurisprudence has been enormous; no other lawyer comes close. And while Gerry will admit to having had an impact, in the same breath he downplays it. I once heard him say: "I have had a significant impact on the development of the criminal law in Wyoming; but it's because the Court usually adopted the opposite view of the arguments we made."

Gerry's influence on the hundreds of students who passed through his classes and the Defender Aid Program has been as important as his effect on Wyoming's jurisprudence. For twenty-six years, Gerry's passion for the law and his commitment to excellence were passed on to generations of students, especially those in the Defender Aid Program. That passion was tempered, however, by his unswerving personal and professional integrity. Gerry put into practice what most of the rest of us just preach. He practiced law the way it is supposed to be practiced, with excellence, zeal, and civility.

I could go on and on. But when all is said and done, Gerry achieved a status few lawyers, and even fewer law professors, ever attain. He's a lawyer's lawyer. Were my freedom on the line, I'd want Gerry on my side, to brief and argue my cause to an appellate court. No other lawyer I know comes close to Gerry's encyclopedic knowledge of criminal law and procedure, or his mastery of the English language. No other lawyer would or could represent me as well.

I'll be in Ireland this summer, the ancestral home of the Gallivans. My plans include stops in a pub or two. I can't think of a more appropriate place to raise a pint and say: "Thanks, Gerry. Having you here was a party."

Career Highlights

EDUCATION

J.D. 1961, University of Notre Dame

A.B. 1958, Canisius College

EMPLOYMENT

Professor of Law, University of Wyoming College of Law, 1970-1996

Subjects taught: Advanced Appellate Advocacy, Civil Procedure, Criminal Law, Criminal Procedure, Defender Aid Clinic, Domestic Relations, Professional Responsibility, Prosecution Assistance Clinic, Remedies

Attorney, OEO Neighborhood Law Office, Buffalo, New York, 1968-1969

Assistant United States Attorney, Western District of New York, 1965-1968

Associate, Moot, Sprague, Marcy, Landy, & Fernback, Buffalo, New York, 1964

Clerk, Honorable James C. Connell, United States District Court, Northern District of Ohio, 1961-1963

PUBLIC SERVICE

Democratic Nominee, New York State Assembly, 1964

Candidate, Laramie City Council, 1980, 1982

PUBLICATIONS

Supreme Court Jurisdiction and the Wyoming Constitution: Justice v. Judicial Restraint, 20 LAND & WATER L. REV. 159 (1985)

Of Murder and Madness, by Gerry Spence, 19 LAND & WATER L. REV. 313 (1984) (book review).

Insanity, Bifurcation and Due Process: Can Values Survive Doctrine, 13 LAND & WATER L. REV. 515 (1978).

Comparative Analysis of Wyoming Laws, Rules and Legal Practice with the American Bar Association Standards for Criminal Justice (paper) (1976)

Insurance and Public Policy: A study in the Legal Implementation of Social and Economic Public Policy, by Spencer L. Kimball, 36 NOTRE DAME LAW. 619 (1961) (book review)

Recent Decision, Death Sentence of Youth Reduced to Life Imprisonment, *Commonwealth v. Green*, 396 Pa. 137, 151 A.2d 241 (1959), 35 NOTRE DAME LAW. 298 (1960)

Note, Power of a Municipality to Appropriate Public Funds in Support of Cultural and Recreational Activities, 35 NOTRE DAME LAW. 241 (1960)

Recent Decision, Prisoner Cannot Maintain Suit for Injuries Suffered While Confined in Federal Hospital, 34 NOTRE DAME LAW. 590 (1959)

HONORS

Visiting Professor, Mercer University, Fall 1984

Wyoming State Bar Pro Bono Award, 1988

Outstanding Law School Teacher of the Year, 1977, 1989, 1992