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A TRIBUTE TO PROFESSOR HERMAN M. LEVY

Margaret M. Russell*

I. INTRODUCTION

On April 5, 2004, the Santa Clara University School of Law lost a beloved and exceptional professor, mentor, colleague, and friend. Professor Herman M. Levy passed away in Oroville, California, the day before his seventy-fifth birthday. Herman had taken a quick trip to Oroville to conduct a labor arbitration; he had served for many years as an arbitrator throughout California and other western states. Sandwiching arbitrations between teaching commitments and other law school obligations, Herman once told me that his schedule kept him fresh and up-to-date in his labor law expertise. He also felt that as a “people-oriented” person, he appreciated the opportunity to assist in the satisfactory resolution of grievances. Judging from the frequency with which he was chosen by both sides to arbitrate disputes, his skills were trusted and respected. Every year, I invited him to visit my first-year civil procedure class to talk about arbitration as a form of dispute resolution; he always delighted the class with his combination of wry humor and practical wisdom. These “simple gifts”—educating students and conducting arbitrations—filled the last years of Herman’s life and brought him deep fulfillment. It gives me pleasure to think that Herman passed from this world in the midst of doing what he loved, with warmth and with excellence. May we all be so

* Associate Professor, Santa Clara University of Law; A.B. 1979, Princeton University; J.D. 1984, Stanford Law School; J.S.M. 1990, Stanford Law School. I would like to thank Lee Halterman, Kimiko Russell-Halterman, Bill Sokol, and the many colleagues, students, and former students who shared memories with me and with each other as our community mourned Professor Levy’s death. Special thanks to Bill Gould, whose memorial service remembrance of Professor Levy on April 15, 2004 first sparked my interest in Professor Levy’s role in the drafting of the Agricultural Labor Relations Act of 1975.

fortunate.

II. A BRIEF BIOGRAPHICAL SKETCH

Herman M. Levy grew up in western Pennsylvania and attended college at the University of Pittsburgh, receiving his bachelor's degree in history in 1951. He received a J.D. degree from Harvard Law School in 1954 and then served for two years with the United States Army Counterintelligence Corps in Germany. After a year with the Internal Revenue Service in the District of Columbia, he became a member of the D.C. bar and spent the next thirteen years (1958-1971) as an appellate attorney with the National Labor Relations Board in D.C. During this time, he also studied at Oxford University, which awarded him a diploma in Comparative Labor Law in 1968. He joined the law faculty at Santa Clara in 1971.

In thirty-three years at Santa Clara, Herman nimbly balanced professorial excellence with a wide range of activities that reflected his expertise in the field of labor law. In 1975, he was a consultant to the California Agriculture and Services Agency, a position that led to his groundbreaking work on the drafting of the Agricultural Labor Relations Act ("ALRA"). From 1979 to 1980, he served as a consultant to the United States House of Representatives Subcommittee on Labor Management. From 1986 to 1987, he was a consultant for the United States Department of Labor. As a teacher, he trained thousands of students in contracts, labor law, arbitration, and sports law; in 1977, students honored him with the Outstanding Professor of the Year Award. Herman was also actively involved in university life and served as president of the University's Faculty Senate from 1988 to 1989. He became a member of the bar in New York in 1990. In later years, Herman became increasingly involved in labor arbitration and was a member of the National Academy of Arbitrators.

III. HERMAN LEVY'S LEGACIES

It is difficult to convey the depth of fondness and respect that Herman's students, former students, colleagues, and friends felt for him. He was both a beacon of and a magnet for affection and good humor. Anyone who spent any amount of time with him quickly learned that his genteel manner

lightly cloaked a sharp wit, contrarian mind, and passionately outspoken views. The bulletin board outside his office overflowed with pointed cartoons and news clippings; the array of postings drew more than one passer-by to pause for entertainment and edification. Fortunately for those passers-by, Herman could usually be found in his office, door open, nestled amidst scores of books and files and photographs, ready to talk. On one wall was an eye-catching clock—or what appeared to be a half-clock, a wooden clock neatly cleaved down the middle. Herman waggishly displayed it as a reminder that his office had once been twice as large, before the law school faculty had grown and forced a reduction in everyone's office space.

Herman Levy influenced a great many lives in ways too numerous to detail. His memorial service at the University's Mission Church on April 15, 2004 was marked by many eloquent remembrances. I focus below on two legacies well known to the Santa Clara community—those of teacher/mentor and colleague—and also address a third, lesser-known legacy of which Herman was justifiably proud: his role in the drafting of a major labor statute, the Agricultural Labor Relations Act of 1975. Let us begin with the role for which Herman was most beloved: that of teacher and mentor.

A. Teacher / Mentor: "Champion of the Underdog"

In 2003, one of Herman Levy's former students commented: "He always was the champion of the underdog, taking on issues that have no impact on his life at all—whether they are for students in the law school or for inadequate parking for people with handicapped privileges."¹ Professor Ed Steinman once compared him to "Mr. Chips," the beloved fictional schoolmaster first made famous by the 1933 James Hilton novella and 1939 MGM movie. Memories of Herman tend to evoke these larger-than-life metaphors for good reason: Herman was supremely devoted to his students inside and outside of the classroom, and they knew it. Herman spent countless hours with students in his office, discussing con-

1. *Herman Levy, 1929-2004*, FYI: THE FACULTY-STAFF NEWSLETTER, Apr. 15, 2004 at 1, <http://www.scu.edu/fyi/apr152004/levy.cfm> (last visited Apr. 10, 2005).

tracts and labor law, and counseling them about exams and careers. As long as his health permitted, he invited his first-year students to his home for a “sherry party” to welcome them to law school and introduce them to each other. Students could count on Herman Levy to fight for adequate student lounge space, decent on-campus food, and sufficient parking. He was a sprightly and popular presence at graduation, where for many years he served as “master of ceremonies.” When student organizations held their noontime panels and annual banquets, Herman was always there. In fact, the last time that I saw Herman was three days before his death, thoroughly enjoying himself at the spring banquet of the Asian-Pacific American Law Students Association; as usual, he was surrounded by a diverse array of Santa Clara students, thoroughly in his element.

Herman Levy’s renowned devotion to his students did not end when they graduated. He was a genius about keeping in touch and continuing to mentor his students, particularly his labor law students, long after they graduated and established successful practices of their own. He was an avid planner of informal reunions and held an annual luncheon of his former students who were in labor and employment careers; it reinforced the glue of his mentoring relationship with them and gave them an opportunity to mentor the newer, junior attorneys. I recall many times when I stopped by Herman’s office and heard him proudly mention (and frequently read from) a recently received letter from a former student. He was a loyal and supportive correspondent—a true gem in a world of sloppy e-mails and other rushed communication.

B. Colleague: A Santa Clara Treasure

I was Herman Levy’s colleague for nearly fourteen years: from the time I started my career as a law professor until Herman’s death. For many of those years, our offices were across the hall from one another. Through the ups and downs of both of our lives, we never had a bad day with one another. Herman and I had little in common in terms of background experiences, not to mention our respective ages, genders, races, religions, or cultural backgrounds. (I will confess, however, that we were kindred spirits on a number of social justice issues.) Yet Herman felt very much like family to me. He was someone who had been quite kind to me and many

other junior faculty members, and as our careers progressed we began to feel a bit protective of him as though he were a father or grandfather. I imagine that many others—students, graduates, and colleagues—felt the same way. I certainly did not delude myself into thinking that I was the only one who felt a familial affection for him; many others viewed him with great affection and high esteem.

Herman's opinionated nature and steely determination were no secret to his colleagues. Herman loved Santa Clara University, especially the Law School, but as a "champion of the underdog," Herman saw his workplace first and foremost from a worker's perspective. This meant that he felt a serious obligation to raise workplace issues on behalf of faculty and staff at every level. Respect for workers infused his professional and personal philosophies, and he was fearless in speaking out in defense of his position. Wages, hours, conditions of employment: you could count on Herman to bring up these issues at faculty and committee meetings and to argue as passionately on behalf of others as he did on his own behalf.

One of Herman's most noteworthy collegial qualities was his loyalty.

Herman did not shy away from political controversies and was unafraid to stand up for his and his friends' beliefs. When Professor William B. Gould IV of Stanford Law School, a close friend and colleague of Herman's, was nominated by President Bill Clinton to become chairman of the National Labor Relations Board, he was the target of much conservative Republican opposition; according to Professor Gould, Herman Levy was single-handedly responsible for organizing a petition of legal scholars in support of his nomination.² On a more personal level, Herman was a steadfast friend in times of joy as well as adversity. Weddings, birthdays, babies, retirements: many of us invited him to share in celebrating the major events of our lives, and he did not take such invitations for granted. Even when his health was failing, he found a way to travel up and down the Peninsula (and beyond) to celebrate with colleagues and friends. The penultimate phase of his life was marred with sadness and strife be-

2. WILLIAM B. GOULD, IV, LABORED RELATIONS: LAW, POLITICS, AND THE NLRB – A MEMOIR 25 (2000).

cause of litigation stemming from a dispute with the Law School administration; however, when he and the University reached a settlement in 2003, Herman seemed to bounce back and enjoy with new vigor the support of those around him.

*C. The Agricultural Labor Relations Act of 1975—“La Esperanza de California para el Futuro”*³

Finally, I would like to turn the spotlight on a little-discussed legacy of Herman Levy’s—one of which he was particularly proud. As mentioned earlier, Herman served as a consultant to the California Agricultural and Services Agency in 1975. This agency was responsible for drafting the Agricultural Labor Relations Act (“ALRA”), which was signed into law on June 5, 1975 by Governor Edmund G. (Jerry) Brown and which became effective on August 28, 1975. Herman played a major role in the drafting of this legislation; in a 1975 article in the *Santa Clara Lawyer*, he described it as “the first state law which purports to deal with agricultural problems in a comprehensive and even-handed manner.”⁴ Today, it remains one of the most progressive and far-reaching labor statutes in the United States in its treatment of agricultural workers and their rights to engage in organized activity and collective bargaining.⁵

In outlining the background history of the ALRA, Herman wrote:

When the National Labor Relations Act (NLRA) was passed in 1935, agriculture was specifically excluded. This exclusion was not based on the fact that agriculture was so unique an industry that the NLRA could not successfully regulate it. Rather, it reflected a political reality: the labor-oriented members of Congress needed the votes of legislators from agricultural districts to pass the NLRA, and the price exacted for these votes was the exclusion of

3. This Spanish phrase, meaning “California’s Hope for the Future,” appears in Professor Levy’s 1975 article for the *Santa Clara Lawyer* (now *Santa Clara Law Review*). See Herman M. Levy, *The Agricultural Labor Relations Act of 1975 – La Esperanza de California para el Futuro*, 15 SANTA CLARA LAW. 783 (1975).

4. *Id.*

5. Telephone Interview with William A. Sokol, Oakland labor attorney (Jan. 24, 2004). See Tracy E. Sagle, *The ALRB – Twenty Years Later*, 8 SAN JOAQUIN AGRIC. L. REV. 139 (1998).

agriculture from coverage by the NLRA.⁶

The remainder of his article continues in this straightforward vein, explaining the genesis, structure, and rationale of the ALRA. He explains that political upheaval in agricultural labor relations in the 1960s and early 1970s gave rise to the need for a comprehensive regulatory scheme. He further observes that, of the many ALRA proposals considered, the one finally adopted was modeled closely on the NLRA, “with some substantial changes to accommodate the special needs of the agricultural industry or to correct provisions which clearly would be deficient or inappropriate if applied to agriculture.”⁷ Finally, he notes:

The overriding principle guiding the drafting of this new legislation was fairness to all parties affected—growers, unions, farm workers, and the public. At the same time, the law had to provide a viable framework to regulate agricultural employers and unions, protect the workers, and deal effectively with the problems arising in this area.⁸

The primary mechanism for oversight is the Agricultural Labor Relations Board (“ALRB”), whose five members are appointed for five-year terms by the governor.⁹

Herman was proud of his work on the ALRA, and regarded it as an important and viable extension of core provisions of the NLRA in the context of the agricultural industry.¹⁰ Among the extensions of particular interest to him was the ALRA’s secondary boycott provision, which permits a labor organization “to exercise its first amendment rights by truthfully advising the public that products produced by an agricultural employer with whom it has a dispute are being distributed by a neutral employer.”¹¹ This differs from the NLRA, which has banned secondary boycotts since the Taft-Hartley amendments of 1947.¹² In addition, several provisions are specifically tailored to address the more transient, short-term nature of agricultural employment, resulting in

6. Levy, *supra* note 3, at 783-84.

7. *Id.* at 785.

8. *Id.*

9. *Id.* at 787.

10. Telephone Interview with Professor William B. Gould, IV (Jan. 24, 2004).

11. *Id.* at 793.

12. *Id.*

potentially greater protection for agricultural workers who would not even be covered by the NLRA. In his own work, Herman would explore his concerns about the lack of protections for farmworkers under federal legislation. In opening an article entitled *Collective Bargaining for Farmworkers: Should There Be Federal Legislation?*, he wrote, somewhat humorously: "To avoid keeping the reader in suspense, the answer to the question posed by the title of the article is provided prior to any discussion. The answer is yes, there should be and there is a need for federal legislation to provide collective bargaining for farmworkers."¹³

In recent years, several commentators have assessed the value and impact of the ALRA with respect to the rights of farm workers. Maria L. Ontiveros identifies the ALRA as a critical example of empowerment and influence of Latino/a workers, culminating in the rise of the United Farm Workers:

In order to give farm workers the right to organize and in direct response to the United Farm Workers, the California legislature passed the Agricultural Labor Relations Act (ALRA) in 1975. The ALRA is the most extensive and most favorable of any state law regulating farm workers. Its passage represents the recognition of the importance of unionization/collective action for farm workers. Because it is tailored specifically to the needs of agricultural workers, it can serve as a model for federal regulation of farm workers or for other sector-specific labor law reform.¹⁴

In a more extensive analysis of the Agricultural Labor Relations Board ("ALRB"), the agency that administers the ALRA with respect to elections and unfair labor practices, Tracy E. Sagle foresees a long-term need for the ALRA and ALRB:

Union membership is again on the rise, and if the numbers continue to increase, so too will the activity of the ALRB. Regardless of the increase in union members, farmers need workers and workers need farmers, and as long as this holds true, there will always be a need for an

13. Herman M. Levy, *Collective Bargaining for Farmworkers: Should There Be Federal Legislation?*, 21 SANTA CLARA L. REV. 333, 333 (1980).

14. Maria L. Ontiveros, *Forging Our Identity: Transformative Resistance in the Areas of Work, Class, and the Law*, 33 U.C. DAVIS. L. REV. 1057, 1060 (2000).

agency to mediate the two.¹⁵

In summary, Herman's behind-the-scenes work in drafting the ALRA, with its establishment of the ALRB, was a remarkable achievement with long-lasting effects.

IV. CONCLUSION

The manner in which the Santa Clara Law School community responded to Herman Levy's death speaks volumes about both the nature of this community and Herman's place in our hearts. One colleague stepped forward to write a caring obituary; another volunteered to organize the memorial service; another "adopted" Herman's beloved dog Lucy.

Students, staff, and faculty placed bouquets of flowers, written prayers, and condolence notes outside his office door; they remained there for several months as the Law School quietly came to terms with the magnitude of our loss.

In times of bereavement, another colleague has shared with me her recitation of the kaddish, the Jewish prayer of mourning to remember souls of the past. I do not understand all of it, but I remember very well one part: "May there be abundant peace from heaven." That seems quite fitting in remembering the life of Herman Levy.

15. Sagle, *supra* note 5, at 171.