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Anita Bernstein

Brooklyn Law School, anita.bernstein@brooklaw.edu

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A simple story and a simple statement that epitomized who David is. David just knew how to make all of us feel special and make us live our lives as better persons. I miss him and being able to talk to him about the life, law and Loyola, but he will live on in all of us.

*Professor Anita Bernstein*¹³

"A Little Happier": David Leonard as Co-Author

Around the time of David's death, the acclaimed film critic Roger Ebert wrote an entry in his journal. Ebert, left unable to speak or eat or drink from complications of thyroid cancer, had been contemplating human existence. His wife appeared with him on the Oprah Winfrey show and read his words aloud:

I believe at the end of it all, if we have done something to make others a little happier and ourselves a little happier that is about the best we can do. To make others less happy is a crime, to make ourselves unhappy is where all crime starts.

We should try to contribute joy to our world. That is true. No matter what our health circumstances are we should try. I didn't always know this, but I'm happy I lived long enough to find out.¹⁴

David Leonard, who did not live nearly long enough, nevertheless did have time to find out what Roger Ebert had suffered to learn. He lived the ideal of "mak[ing] others a little happier" more than anyone else I have known. I write recalling a six-year work relationship: David and I co-authored two editions of a study aid called *Torts: Questions and Answers*. My time with David was a

13. Anita and Stuart Subotnick Professor of Law, Brooklyn Law School.

14. Emily Friedman, *Film Critic Roger Ebert Discusses His Cancer and His 'Happy Life,'* ABC NEWS, Mar. 2, 2010, <http://abcnews.go.com/Entertainment/roger-ebert-cheerfully-talks-oprah-winfrey/story?id=9987483>.

study in happiness-making that I watched from the sidelines—sometimes agape, always humbled.

A tribute page on the Loyola Web site chronicles David's career of making others a little happier. Posters there, including me, do not have enough room to expound on a lifetime of kindnesses. I know that my five pages here stand in for many other stories and memories that built up over David's handful of decades on earth. When making friends, teaching students, explaining doctrine, fostering governance at Loyola and Indiana, and just going through his day, David improved what he found. Conversations or e-mail exchanges with him left people feeling more at peace, better understood, and more competent to go on with their work.

Like many others (especially students) who encountered David at a critical juncture, I met David in the form of a rescuing angel. It was the fall of 2003. I had signed a contract with Lexis-Nexis to compose at least 175 multiple choice questions, along with a couple dozen short-answer questions, on torts. Writing short-answer questions? Piece of cake. Multiple choice? Well, it seemed to me a modest little challenge, back at what Contracts scholars ominously call the time of execution. I'd taught the subject for thirteen years, and had used multiple choice as a testing instrument when teaching professional responsibility, but I had never tried to write a multiple choice question on torts.

I soon learned that the format eluded me. All I could think to do was look for obscure—yet pertinent too, I hoped—fact patterns from barely reported state cases, focus on a point of doctrine, and squeeze one question from each decision. An hour's work might yield two questions. Okay, 173 to go. When I hit 10, I felt depleted and in despair. How could I push out even ten more, let alone ten dozen? Also, why would anyone ever agree to write a *Q&A* text? I reached the editor: *Sorry, I can't do it. I am in breach.* What the remedy could be I had no idea, but squarely I faced my obligation to pay.

My editor, the high-smarts Heather Dean (who unfortunately for David and me left the company a couple of years later), stepped up to kick the problem. Her idea was to present me with a co-author. Heather had worked with David when he published one of the earliest *Q&A* texts, on the law of evidence. Of course the two of them were on affectionate terms: any relationship that had David in it

was a harmonious relationship. Heather told me that David possessed an archive of old multiple questions on torts—more than a hundred, she thought. He had told her they weren't all of uniform quality, but they might help, and he was willing to release them from his hard drive. Maybe, said Heather, once I worked through the Leonard stash, culling and revising, I would feel able to go on? Lexis-Nexis would be a little happier if it ended up with a publishable manuscript.

Because of what David brought to it, Heather Dean's editorial plan worked like the proverbial charm. Having started our co-authoring relationship by contributing much more than fifty percent of the work, David immediately applied himself to more nurturing. Did I need anything else? How could he help? Heather's prediction about my learning how to do it proved correct: after extracting and hammering about 75 questions from David's base, I found myself writing questions on topics he hadn't covered—mostly defamation, commercial torts, damages, and apportionment, plus a few in the areas that his questions did include—fast and fluently. We met our deadline and the book went on to sell well.

Being rescued by David reminded me of why I, so ignorant of the fabrication of multiple choice questions, had said yes to the *Q&A* contract in the first place. None of my close friends had written study aids and the form was new to me when Lexis-Nexis reached out. I didn't know whether it made sense to accept the assignment. Seeking advice in this pre-David era, I consulted the wise Paul Marcus, a senior colleague I'd met a few years back, whose book on criminal law was one year ahead of mine on the *Q&A* titles list. Paul, knowing both that I felt passionate about teaching and that I'd confined my publications mainly to law reviews, encouraged me to create the book and to think of the project as both teaching and writing. "It's a way to connect with your students," he said. Paul explained that for law professors, commercial outlines are the only kind of academic publication that their students seek out. Students appreciate it, inevitable flaws and all, because they can hold in their hands a text covering the same material that had come out of the instructor's mouth but better edited, amenable to rereading, and with tidy answers to questions in the back. *You can make them a little happier*, Paul was saying.

Working with David underscored Paul's description of study-aid writing as an instance of generosity. Before our collaboration, I had assumed that law professors write commercial books for the cash. Maybe they do, but David did not get paid for revisions to his already clear prose, his famed searches for funny pop-culture references that could keep a point of doctrine memorable, and all the other labors toward user-friendliness that he, by example, taught me to undertake. When we moved on to our second edition and David was getting sicker, I tried to assume some of his burden-easing work by making the book more compatible with students' needs.

I would have had this focus even without him—I've always been interested in marketing as a business matter, and responsiveness as a personal and social characteristic—but David always reminded me, through both conduct and suggestions, to keep what other people needed in mind. This priority of his never wavered. Whenever I had an idea about changing our book, his response was usually "Yes, let me help by giving some potential additions that'll add clarity." On rarer occasions, his answer would be "I think it'll end up too confusing" or (based on his veteran status as an early *Q&A* author) "Probably too expensive [for the publisher]." Never, even when he was quite ill, did he say (in effect) "Nah, too much work." At the end, whenever he would be too debilitated to complete a task, he would apologize for not getting it done and, trying not to worry me, declare that he was now feeling better and would take care of it right away. He gave to the second edition of *Q&A* time and strength that he didn't have to spare.

David and I spent time together in person only once, after the first edition of *Q&A* was underway and I had come to Los Angeles for a few days. Teaching at Emory at the time, I had whined about Atlanta being inland. David had a cure: the beautiful oceanfront restaurant at Shutters on the Beach, the Santa Monica hotel. Pacific view for me, David said gallantly, and as the waves pounded the shore behind him he told me a little more about the cancer—just enough for me to know that it was aggressive and that he felt sad and angry and frightened. And then David moved to where he was more at home: nurturing. I needed tourist advice to guide the rest of the afternoon. He told me what to look for at the amusement park. He mapped out a walk to Venice Beach.

We hugged at our parting: him into his valet-drawn car, me on foot to check out his beachfront pointers. Maybe he knew he was saying a real good-bye. Although over our six years I never thanked David enough for all the happiness he created, for me and so many others, I'm glad I told him that day I was grateful he'd joined me on the book.

In early 2008 I spent nine days in Los Angeles, speaking at two conferences on the weekends with the extended Martin Luther King holiday in between. David, hewing to the pattern of understating the effects and prognosis of his illness, told me he was all right but would be at home, not traveling or visiting. And because he was not using his office, he said, did I want it as a camping ground for the weekdays I wouldn't be at the conferences? Classic empathy from him: as far as I know, David had never flown to a distant city for a week of semi-work without portfolio, but he understood how useful and convenient a desk and telephone and a bit of workday privacy would be.¹⁵

On this visit, I enjoyed one last round of happier-making attentions. David asked Bill Araiza, the Loyola associate dean (who went on to become my colleague at Brooklyn), to give me his office key and a swipe card. He told me about the school's shuttle, set up to transport people to and from the Metro station at Figueroa Street, which I enjoyed riding. He activated his desktop computer so that I could work on Power Point slides for my conference presentation.¹⁶ His assistant stood by to answer my questions.

How do you give back to David Leonard?, I thought then. Reaching him at home from his office phone, I asked whether he wanted me to come to Santa Monica to deliver anything: mail? books? papers? No thanks, David said. Was the office working out? Did I need anything? Could he help?

15. David knew about, and was amused by, my harebrained resolution to spend a week getting around town by public transport. I was indulging a perverse desire to live a temporary and less boozy version of the carless L.A. lifestyle that Mickey Rourke led in the movie *Barfly*. Because I was staying at a low-amenities dive off Hollywood Boulevard (for the sake of saving money while being in walking distance of the Red Line), access to David's office downtown was most welcome.

16. The presentation eventually took form in these pages. Anita Bernstein, *Sanctioning the Ambulance Chaser*, 41 LOY. L.A. L. REV. 1545 (2008).

***Professor Richard D. Friedman*¹⁷**

More than two decades ago, I joined the American Bar Association's Committee on the Rules of Criminal Procedure and Evidence. The Committee usually meets a couple of times a year to discuss and sometimes comment on developments within its jurisdiction. Some of the members have personal axes to grind; some take undue enjoyment in the sound of their own voices. Before long, I noticed that neither of these descriptions fit a fellow law professor, of just about my age, named David Leonard, then of Indiana. When he spoke, he did so modestly, quietly, and to the point. His comments were always thoughtful, insightful, fair-minded, and well-informed. Ultimately, he became chair of the committee, bringing into play all those same qualities, plus remarkable—but what I came to recognize as very characteristic—efficiency. In committee business apart from it, he always revealed an endearing sweetness of temper, mixed with a wry sense of humor. Once, complaining in an e-mail message about how useless Supreme Court confirmation hearings had become except as far as they provide politicians with the opportunity to grandstand, he wrote: "Those who know me might be a little surprised at how cynical I sound. Well, every once in a while I do get my back up, and this is one of those times!"

Shortly before I met David, I had become general editor of *The New Wigmore*. This is a successor to John Henry Wigmore's great work, which had dominated the field for the first three quarters of the century. My principal job was to recruit an excellent team of authors—no one in the modern day could hope to replicate Wigmore's one-man show. David was one of the first people I asked, and to my delight he joined the project. He tackled the project with great ability and broad vision, and a degree of efficiency and industry that can perhaps best be described in this context as Wigmorean. Taking my editorial duties seriously, I sent him copious notes. If I were on the other end of those, I would have regarded them as enormously burdensome. But David received them unflinchingly and graciously as always, and he took them seriously in producing the

17. Alene and Allen F. Smith Professor of Law, University of Michigan Law School.

final volume.¹⁸ Regularly as clockwork, there followed high-quality, thorough and meticulous supplements, and then a second edition.¹⁹ The work has proven of immense value to bench and bar.

I assumed David and I would be friends and colleagues for decades to come, until we were both very old men. But then he told me about his devastating illness. He did so, as I would expect, frankly and directly laying out the facts for me, without fanfare but without any attempt to minimize or evade the situation. He conducted himself with the tenacity I had come to expect of him and with a degree of bravery that I hope never to be called on to demonstrate. He relished every bit of meaningful time he had, and without complaint endured miserable ordeals to buy it. I believe he found it therapeutic to keep on working. And work he did. He kept churning out annual supplements to his treatise volume. And then, remarkably, he produced another volume, on a very distinct topic.²⁰ And to top it off, he took on a new job, as Loyola's inaugural Associate Dean for Research. He was a wonder to me; I wish I were as productive in full health.

In all significant respects but longevity, David Leonard was—and I am confident that he believed himself to be—a lucky man. Saddened as I am that our association was cut so terribly short, I feel lucky that we had it for as long as we did. And I am sure that his family, his students, his colleagues, and those in the wider legal world who were graced not only by his wisdom but also by his essential goodness, feel the same way.

18. DAVID P. LEONARD, *THE NEW WIGMORE: A TREATISE ON EVIDENCE: SELECTED RULES OF LIMITED ADMISSIBILITY* (1996).

19. DAVID P. LEONARD, *THE NEW WIGMORE: A TREATISE ON EVIDENCE: SELECTED RULES OF LIMITED ADMISSIBILITY: REGULATION OF EVIDENCE TO PROMOTE EXTRINSIC POLICIES AND VALUES* (rev. ed. 2002).

20. DAVID P. LEONARD, *THE NEW WIGMORE: A TREATISE ON EVIDENCE: EVIDENCE OF OTHER MISCONDUCT AND SIMILAR EVENTS* (2009).

Professor Roger C. Park²¹

Among his many accomplishments, David Leonard was a leading scholar on the law of character evidence. He abhorred attacks on character, and expertly documented the historical and psychological justifications for banning this type of evidence. Doubting the predictive value of attributions of character, he believed that human misconduct was often due to the pressure of situations rather than broadly defective traits of character. He carried this skepticism about the value of character judgments into his personal life. I can't remember his saying an unkind word about another person's personality or character, and he was uninterested in hearing such words from anyone else. He was truly gentle and forgiving.

Despite his documented evidence about the unpredictability of human character, I can't help but think of David's life itself as a piece of evidence that there is such a thing as an enduring trait of character. He may have been right in thinking that character evidence should ordinarily be barred from the courtroom. But his personal life certainly indicated that good character does lead to good deeds. He was consistently kind, generous and courageous. Perhaps he happened to encounter situations that caused him to display that conduct, or perhaps he was just an exceptional man as well as an exceptional scholar.

I sometimes had academic disagreements with David—for example, as the reader might guess, about the value of character evidence. Another trait that he invariably displayed was the ability to be equable about academic differences of opinion, to critique and be critiqued without any damage to friendship.

Steve Goldberg and I were extremely lucky in convincing David to join us in co-authoring a text on evidence. He maintained an active and diligent interest in the revision of this book well into his final illness. He was an inspiration to his fellow authors. We will miss him profoundly.

21. James Edgar Hervey Chair in Litigation, University of California, Hastings College of the Law.

Professor Kenneth W. Graham, Jr.²²*Diligent Dave—A Remembrance*

I would rather feel compassion than know the meaning of
it. —Thomas Aquinas

Anyone who heard the laudatory adjectives pouring from the lips of speakers at funeral services for Professor David Leonard might not think of adding “under-appreciated” to the list. And yet—despite his devotion to it, no one mentioned Dave’s prodigious scholarship. Oversight? Perhaps. But maybe speakers felt no need to speak of his writing because it simply reflected the virtues of the man.

A glance at Professor Leonard’s latest writing should suffice to show the virtues that suffuse it. If one word could capture most of the qualities mentioned by Dave’s eulogists, *diligence* might do. One respected dictionary defines *diligent* this way: “1. of persons—consistent in application, persevering in endeavor . . . industrious”²³ Let us take a peek at Dave’s work to see these qualities at play.

In 1986, the publishers of Wigmore’s massive treatise on the law of evidence agreed with Professor Richard Friedman’s proposal to produce a completely new work rather than a revision of the treatise. Professor Friedman spent some time assembling a cadre of evidence scholars for the task. Dave agreed to do the volume on the “quasi-privileges”—or as he called them, “Selected Rules of Limited Admissibility.”²⁴ Diligent Dave completed his assigned volume well before any of the others.²⁵

22. Professor of Law Emeritus, University of California, Los Angeles School of Law.

23. THE COMPACT OXFORD ENGLISH DICTIONARY 666 (2d ed. 1987). The entry also includes *attentive*, *assiduous*, and *careful*, adding that it comes from the Latin *diligere*, which adds “esteem highly” and “take delight in doing.”

24. *Quasi-privileges* resemble true privileges in excluding otherwise relevant evidence for policy reasons, but differ in giving the holder only a right to bar use at trial, not to refuse to disclose in discovery; for example, the rule codified in FEDERAL RULE OF EVIDENCE 407 covering evidence of subsequent repairs.

25. General Editor’s *Introduction* to DAVID P. LEONARD, THE NEW WIGMORE: A TREATISE ON EVIDENCE: SELECTED RULES OF LIMITED ADMISSIBILITY xxxv (1996) (Leonard “has also—putting others of us to shame—completed this volume, covering a widely disparate subject matter, with remarkable speed, making it the first volume of *The New Wigmore* to be published.”).

Professor Friedman praised Dave for more than his diligence—for example, he added his “clarity of expression” to the list of virtues.²⁶ We can see his way with words in his law review articles. Consider, for example, the practice of some appellate courts when affirming a decision admitting evidence of other crimes to simply list all the exceptions in the applicable statute or rule in hopes that the reader will think one of them might apply. Some writers called this the “smorgasbord approach,”²⁷ but Dave’s label—“the kitchen sink”—seems much more apropos.²⁸

Professor Friedman also lauded Dave for his “sound judgment”²⁹ and “scrupulous fairness.”³⁰ We can find a good example of this in Dave’s introduction to a symposium published in this law review.³¹ He gives generous descriptions of ideas that he probably found questionable. And when one of the authors claimed novelty for an idea that Dave undoubtedly knew goes back at least as far as Wigmore, Dave passed over this gaffe in silence.³²

Finally, Professor Friedman thought the treatise exemplified Dave’s “thoroughness and insight.”³³ We can also see this in his effort to explain the verdicts in the Rodney King and O.J. Simpson cases; he takes an unusual step for an academic by looking at evidence from the perspective of the jury.³⁴ Similarly, in his analysis of the use of other crimes evidence to prove knowledge, Dave

26. DAVID P. LEONARD, *SELECTED RULES OF LIMITED ADMISSIBILITY: THE NEW WIGMORE* xxxv (1996). For an example, see the description of policy at *id.* at lv.

27. 22 CHARLES ALAN WRIGHT & KENNETH W. GRAHAM, JR., *FEDERAL PRACTICE AND PROCEDURE: EVIDENCE* § 5240, at 479 (1978).

28. David P. Leonard, *The Use of Uncharged Misconduct Evidence To Prove Knowledge*, 81 NEB. L. REV. 115, 148 (2002).

29. For an example of this, see DAVID P. LEONARD, *SELECTED RULES OF LIMITED ADMISSIBILITY: THE NEW WIGMORE* 1.2 (1996) (analysis must always begin with relevance).

30. *Id.* at xxxv.

31. David P. Leonard, *Federal Privileges in the 21st Century: Introduction*, 38 LOY. L.A. L. REV. 515 (2004).

32. In keeping with the spirit of Dave’s generosity, I forbear from any identifying details.

33. DAVID P. LEONARD, *SELECTED RULES OF LIMITED ADMISSIBILITY: THE NEW WIGMORE* xxxv (1996).

34. David P. Leonard, *Different Worlds, Different Realities*, 34 LOY. L.A. L. REV. 863 (2001).

displays a broad vision, including a historical perspective, and makes a number of careful and crucial distinctions.³⁵

Unhappily, the treatise did not allow Professor Friedman to see another side of Dave's diligence—what the dictionary calls “delight in doing” and his eulogists called “his sense of humor.” But if we return to the symposium introduction and glance at the footnotes, Dave modestly reveals that he was not the first person to imagine Wigmore turning over in his grave and after citing several other writers who beat him to it, including one who applied the metaphor to Greenleaf, Dave concludes that “[i]n a sense . . . Wigmore is rolling over right alongside Greenleaf.”³⁶ This brings to mind the four Marx brothers rolling off the boat in barrels during the opening sequence of their movie “Monkey Business.”

Dave's modesty, noted by several of his eulogists, coexisted with an unusual kind of courage. In his article about the Simpson trial, he admitted that he erred in predicting the outcome of the case and, though he would have been justified in using the third person plural inasmuch as most pundits made the same error, Dave wrote “I”—a rare use of the first person singular in his work.³⁷ He then proceeded, hiding his erudition in the footnotes, to challenge the conventional explanations for the verdict and to use the King and the Simpson trials in an imaginative way to illuminate and vindicate jury verdicts with which he disagreed.

Unlike many of us, Dave had no difficulty in admitting his mistakes. In an article about the effect of the Supreme Court's *Old Chief* decision on the admissibility of other crimes evidence, he started off with “I began working on this article with a grand idea.”³⁸ But he said a bit later “my thesis began to break down as I dug into the cases and considered more carefully the relevance and probative value of uncharged misconduct evidence.”³⁹ If there were a legal

35. David P. Leonard, *The Use of Uncharged Misconduct Evidence to Prove Knowledge*, 81 NEB. L. REV. 115 (2002).

36. David P. Leonard, *Federal Privileges in the 21st Century: Introduction*, 38 LOY. L.A. L. REV. 515, 521 n.19 (2004).

37. David P. Leonard, *Different Worlds, Different Realities*, 34 LOY. L.A. L. REV. 863 (2001) (“I was, of course, utterly wrong.”).

38. David P. Leonard, *The Legacy of Old Chief and the Definition of Relevant Evidence: Implications for Uncharged Misconduct Evidence*, 36 SW. U. L. REV. 819 (2008).

39. *Id.* at 820.

version of the scientists' long imagined "Journal of Failed Research,"⁴⁰ Dave would have had no reluctance in publishing there.

The eulogists mentioned another one of Dave's virtues not usually associated with legal scholarship—strong moral values. But while Dave did not wear them on his sleeve, his writing bears clear marks of a deep moral conviction. For example, in his introduction to the privileges symposium, Dave noted the impact of socioeconomic inequality on the distribution of privileges.⁴¹ And in his article on the King and the Simpson verdicts, Dave compared the demographics of the neighborhoods surrounding the UCLA School of Law and Loyola Law School on his way to a sobering conclusion: without greater socioeconomic equality, courts cannot do justice.⁴²

Dave's eulogists traced his moral values to his religion, raising the question: "what is a nice Jewish boy like you doing in a Jesuit law school?" "Thriving," apparently. Dave seemed in tune with the Catholic bishops who wrote of "the responsibility of individuals and governments to assist the most vulnerable among us."⁴³ Indeed, the somber conclusion of his King and Simpson article echoes the Catholic social teaching that law alone does not suffice to end social conflict.⁴⁴

We may doubt that Dave ever read Ignatius's *Spiritual Exercises* or the pastoral letter of the Catholic bishops on economic inequality. But apparently he found in his own religious tradition an older version of that duty spelled out in *Gaudium et Spes* "to work with all men in constructing a more humane world."⁴⁵ Perhaps in these times of divisive ecclesiastical fanaticism, the ability to work across religious differences to find common ground is David Leonard's

40. The source of this does not readily come to hand, but the idea was that a lot of wasted effort might be avoided if scientists had some journal where they could discover that someone else had already found that their "brilliant idea" did not work.

41. David P. Leonard, *Federal Privileges in the 21st Century: Introduction*, 38 LOY. L.A. L. REV. 515, 517 n.6 (2004).

42. David P. Leonard, *Different Worlds, Different Realities*, 34 LOY. L.A. L. REV. 863, 873–74 (2001).

43. Lucia Ann Silecchia, *Catholic Social Teaching and Its Impact on American Law: Some Observations on the Past and Reflections on the Future*, 1 J. CATH. SOC. THOUGHT 277, 278 (2004).

44. *Id.* at 285.

45. *Id.* at 280.

most significant legacy to the rest of us—and one that he characteristically refused to preach except by example.

***Professor Edward J. Imwinkelried*⁴⁶**

My (Initial) Impressions of David Leonard

I can still remember the very first time I met David several decades ago. We both had attended an evidence conference in Iowa. We had not had an opportunity to speak during the conference, but we had seen each other there. Consequently, when we ended up at the airport at the same time, we immediately recognized each other and began to chat.

Since we both had long delays before our flights, we had a good, long talk. It turned out that we had numerous common interests. We both were intrigued by many of the provisions in Article IV of the Federal Rules, and in particular we shared an interest in the validity of the psychological assumptions underlying those provisions. During that conversation, I formed two strong impressions of David. One was that David was a very thoughtful student of evidence law. It was obvious that he read widely and had thought about many of the issues far more deeply than I had. Although at that time David was just beginning his academic career, David had already carefully dissected many of the provisions in Article IV and had identified the issues that warranted additional scholarly critique.

My second impression was that, simply stated, David was a wonderful, friendly, decent human being. We were virtual strangers to each other, but within a few minutes I felt as if we had known each other for years. One of the things that struck me was the way in which David stated his criticisms. If he thought that a doctrine was unsound or that a specific case was wrongly decided, he couched his criticism in a temperate, modulated way. David was not inclined

46. Edward L. Barrett, Jr. Professor of Law, University of California, Davis School of Law.

toward harsh, overstated language or severe judgments. He seemed so reasonable and willing to give people, including judges and other commentators, the benefit of the doubt. When we parted and left for our respective departure gates, we promised to stay in touch. As I walked away, I was certainly glad that I had met David that day.

A few years later, after I had released the first edition of *Exculpatory Evidence: The Accused's Constitutional Right to Introduce Favorable Evidence*, I decided I needed a co-author to help me update and supplement the text. I thought back to my meeting with David at the airport in Iowa. It seemed to me that David would be the perfect collaborator; as an excellent scholar and a personable individual, he would be so easy to work with. Fortunately for me, David agreed to become my co-author. We worked together on that project for several years. David was a fantastic collaborator. He markedly improved many sections of *Exculpatory Evidence* by sharpening the analysis, and he was such a pleasure to work with. His work was meticulous, he was always on time, and it was always pleasant discussing the work with David.

Unfortunately for me, after a few years, David had to withdraw from *Exculpatory Evidence* because he had been invited to revise one of the Wigmore volumes as part of *The New Wigmore* project. (I was not the only one who recognized David's considerable talent.) David said that he had to devote all his energy to preparing the first edition of *The New Wigmore: Selected Rules of Limited Admissibility*. I was crushed to lose such a fine co-author, but things soon took a turn for the better when I joined *The New Wigmore* team to revise Wigmore's volume on evidentiary privileges. Over the course of the next fifteen years, we frequently corresponded and spoke to monitor the progress of our drafts. David made me proud to be a member of the team. The two volumes he produced, *Selected Rules of Limited Admissibility* and *Evidence of Other Misconduct and Similar Events*, represent exceptional scholarship. In my own work, I rely heavily on David's scholarship.

The National Mock Trial Problem this year involved a question relating to the admissibility of subsequent repair evidence. I help coach our interschool team; and when I briefed the team on that question, I told them that they needed to carefully review David's treatment of that question in *Selected Rules of Limited Admissibility*.

Earlier this month, Professors Steve Saltzburg, David Schlueter, and Lee Schinasi, and I were working on the manuscript for the fourth edition of *Military Evidentiary Foundations*. We were revising the section devoted to the admissibility of statements made during plea negotiations. I pointed out to my co-authors that we needed to add a citation to the very best authority on that subject, namely, David's volume.

David's other volume, *Evidence of Other Misconduct and Similar Events*, is of the same high quality. I have a text discussing the same subject, *Uncharged Misconduct Evidence*. A month ago I released a revised Chapter 9 for that text. I included several citations to David's volume in the revised chapter. Later this year I shall prepare the new cumulative annual supplement for the text. As I am writing this essay, I am looking at the notes I prepared when I initially read David's new volume. In the notes, I listed seventy-three citations to or quotations from David's volume that I plan to integrate into the 2011 supplement. Late last year I corresponded with David and told him that I would be including tens of references to his new volume in the next annual supplement. He seemed pleased. In many respects, the depth and caliber of David's analysis in that volume put mine to shame.

David's career since that meeting in Iowa certainly validated my first impression of him, that he would become one of the preeminent evidence scholars in the United States. He is unquestionably one of the leading commentators on Article IV problems. More importantly, though, the quality of David's life since that meeting validated my second impression, that he was a kind, humane person. My friend, David Leonard, never stooped to harsh language. David would not have known what to do with an *ad hominem* argument if someone had handed it to him on a silver platter, complete with supporting footnotes.

A few years ago our law school was fortunate enough to lure one of our alumnae, Professor Lisa Ikemoto, to leave the Loyola faculty to return to her alma mater. While we were considering that appointment, I spoke with David about Lisa. David's comments were insightful, and he had nothing but good things to say about Lisa. When Lisa accepted our offer, we discussed my conversation with David; I told her that David had spoken of her in glowing terms. It is

an understatement to say that Lisa had nothing but good things to say about David. She raved about his contributions to Loyola Law School and about what a fabulous colleague and friend David was.

Like Lisa, I have nothing but good things to say about David. In some cases, your initial impressions of a person prove to be wrong. I have to confess that I am sometimes not the best judge of character. In other cases, though, those impressions reassuringly turn out to be accurate. My initial impressions of David were that he was potentially a first-rank scholar and an even better person. In this instance, my impressions proved to be entirely correct. I am proud to be able to say that I was one of David's collaborators, and even more privileged to have been one of David's friends.

Professor Laird Kirkpatrick⁴⁷

Even if I had never met David Leonard in person, he is someone I would have known through his extensive contributions to evidence scholarship and his outstanding reputation in the legal academy. He has written for audiences at every level—from exhaustive treatises for judges and lawyers, to an innovative casebook for students learning evidence law for the first time, to a helpful student textbook on the subject as well as several study guides.

He is the author of two volumes in *The New Wigmore* series on evidence that rank among the best and most thorough analyses that can be found on the rules in Article IV of the Federal Rules of Evidence. His work represents treatise writing at its best. His research is meticulous and his analysis keen, insightful, and persuasive.

He is also the author of more than thirty law review articles on various aspects of evidence law. His articles often focus on cutting edge issues or problems with the Federal Rules that have escaped the

47. Louis Harkey Mayo Research Professor of Law, The George Washington University Law School.

attention of other scholars. They have had a significant impact and are often cited and sometimes reprinted in other publications.

I view myself as fortunate that I knew David not only through his writings but through our personal contact over the years. We entered the teaching field at almost the same time and got to know each other at meetings of the Evidence Section of the American Association of Law Schools (AALS) and the Rules Committee of the American Bar Association (ABA), as well as at law school conferences and symposia where we were both participating. We became friends, and David was someone I would always look forward to seeing when attending a meeting of the AALS or ABA.

We found that we had much in common even though we taught at different law schools. We shared an interest in the same academic issues. He taught at Indiana University at Indianapolis for many years, and Indiana is the state where I grew up. We each were raising sons, and we shared stories about our boys. David ended up moving back to Los Angeles, and that is where both of my sons now live and work (one as an attorney who, like David, attended UCLA School of Law). So we always had much to talk about and share.

We worked closely together on the Criminal Rules Committee of the ABA, a committee which analyzes proposed amendments to the Federal Rules of Evidence and Federal Rules of Criminal Procedure and sometimes proposes new rules on its own. After hours of interesting intellectual discussion there came a time when someone needed to prepare a report or write a letter on behalf of the Committee. More often than not, it was David who stepped forward to translate the discursive Committee discussion into a carefully drafted document that could be presented to the higher echelons of the ABA or to the Evidence Advisory Committee of the U.S. Judicial Conference. He always did a brilliant job. He had the utmost respect of the members of the Committee, which led to his election to serve as co-chair of the Committee for a number of years.

David was always kind, congenial, soft-spoken, courteous, and remarkably modest given the extent of his accomplishments. He will be missed not only by his family, his colleagues, and his students, but also by the larger academic community. His passing, at such a young age and at the peak of his career, is a very sad loss for all of us.

Professor Colin Miller⁴⁸

A Tribute to David Leonard

Federal Rule of Evidence 404(a) provides in relevant part that “[e]vidence of a person’s character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion.” Typically, defendants use this rule to shield their past indiscretions from the eyes and ears of jurors. For instance, a defendant on trial for armed battery could prevent jurors from hearing about his history of violence or from using evidence of his past batteries to conclude, “once a batterer, always a batterer.” The rule, however, also precludes the admission of evidence of good character, meaning that the prosecution in the defendant’s armed battery trial could not present evidence that the alleged victim was a pacifist to remove any (reasonable) doubt about who started the altercation. Rule 404(a), however, is subject to a so-called “Mercy Rule,” under which a criminal defendant can inject the issue of character into his trial and have a parade of witnesses extol his virtues to the jury. I imagine that if David Leonard were ever charged with a crime, his parade of witnesses would have extended quite far and could have included both those editing and contributing to this issue.

The character evidence rules are actually the avenue through which I first got to know David. In June 2007, I was only a few months away from starting my teaching career, which I primarily planned to direct toward teaching and researching evidence law. I was a voracious reader of the blogs of the Law Professors Blog Network but noticed the conspicuous absence of an Evidence Professor Blog. I thus contacted Paul Caron and inquired about filling this void, and he asked if I would be willing to find co-editors, an understandable and, as it turned out, fortuitous request. The first person I thought of was David Leonard.

One of my primary areas of interest in evidence law was character evidence, and I had read several of David’s seminal works on the subject, including *The Perilous Task of Rethinking the*

48. Associate Professor, The John Marshall Law School.

Character Evidence Ban,⁴⁹ *In Defense of the Character Evidence Prohibition: Foundations of the Rule Against Trial by Character*,⁵⁰ and *Character and Motive in Evidence Law*.⁵¹ I was also aware of David and Victor Gold's terrific casebook, *Evidence: A Structured Approach*, a resource I use to this day.

I sent David an e-mail asking him if he would be interested in contributing to the blog, and he responded with enthusiasm to the idea of an Evidence Prof Blog. He closed the e-mail with the following note:

And finally, I want to welcome you to law teaching in general and evidence law teaching in particular. And I'd like to make myself available to help you any time, whether it be about the law itself, or teaching, or dealing with students, or whatever. My offer holds whatever I decide about co-editing the blog with you.

David included this last sentence because earlier in the e-mail he informed me that he would likely not be able to contribute to the blog because he had been diagnosed with colon cancer a little more than five months earlier and was still going through chemotherapy. When I talked to David later that week, he confirmed that he would be unable to contribute once the blog started, but he provided me with extremely valuable advice and ideas about how to structure the blog, what topics to cover, and how to distinguish the blog from other blogs. Based upon these contributions, I decided to designate David as a Contributing Editor to the blog, and his influence on the blog can still be seen today. When David passed away, I was asked about whether I wanted to remove his name from the blog, but I decided against it. He will always be a part of the blog.

Our conversation that day, though, was not simply about the blog. Instead, David provided me with extremely useful information about what type of teacher I could and should be. Law professors are in a unique position. My mother and sister are both teachers. They took education classes throughout college. They student taught. They passed tests to be certified as teachers. Like many new law

49. 49 HASTINGS L.J. 835 (1998).

50. 73 IND. L.J. 1161 (1998).

51. 34 LOY. L.A. L. REV. 439 (2001).

professors, I had none of the above. As my first classes approached, I had a surplus of anxiety, excitement, and ideas, but a dearth of information about how to actually conduct a class.

David was invaluable in closing this gap, sharing with me lessons learned from his decades of experience. I incorporated much of what David taught me into my teaching approach and continue to incorporate his lessons to this day. As with the blog, he will always be a part of my classes.

*Professor Myrna S. Raeder*⁵²

It saddens me to realize I won't be talking to David Leonard anymore. David was one of those rare individuals who exuded decency, yet avoided being considered too solemn because of his great sense of humor. He was smart without being arrogant, and he genuinely cared about people and policy. *Schadenfreude* was not a word in his vocabulary. Instead, he was delighted when others succeeded, and always seemed surprised by his own success. In the more than twenty years I knew him, I never remember him raising his voice in anger, and he didn't sweat the small stuff. In retrospect, my informality led me to often call him Dave, not David, but he never protested or even gave me any exasperated looks for my repeated lapses, because substance was always more important to him than form. In fact, his general aura of serenity is one of the things I remember best, although his passion for teaching and scholarship was always evident.

My first recollections of David came from our discussions as members of the ABA Criminal Justice Section's Committee on Rules of Evidence and Criminal Procedure, which in 1987 produced a multiyear review of the Federal Rules of Evidence titled *Federal Rules of Evidence: A Fresh Review and Evaluation*. He headed the group examining character evidence, a subject he explored in well-

52. Professor of Law, Southwestern Law School.

respected articles and in the volume he authored for the New Wigmore treatise. It is fitting that he chose character as the focus of his scholarship, since his own character was beyond reproach. Who but David could seamlessly incorporate into his article, *The Perilous Task of Rethinking the Character Evidence Ban*, the essence of his own behavior “[to] speak ill of others not only hurts the subject, but also the speaker.”

Later, when David moved to California and Loyola, we would sometimes convene an informal lunch group of evidence professors at the various Los Angeles law schools. While we always tried to pick a place which included a vegetarian choice, David’s typical reaction was for us not to be concerned. In other words, he was always willing to put his own requirements second in order to facilitate the rest of us. More recently we worked together when he joined and then chaired the editorial board of *Criminal Justice*, the magazine published by ABA Criminal Justice Section. One incident that speaks volumes about David’s character occurred when we were asked to send our bios to the editor, evoking a number of ‘is mine more impressive than yours’ jokes, since hitting the “reply” button sent the bios to the entire Board. When asked about his bio, David responded by referring us to his “wonderful” “short and sweet” CV on the Loyola Law School Web site, which he had previously only sent to our editor. Despite David’s many accomplishments, his bio was minimalist at best. David emailed that he liked to be “kind of anonymous.” To me, that best describes David—never flashy, always unduly humble, but with a terrific sense of humor, and an understated tone and message that revealed his strong values.

I was always struck by David’s thoughtfulness, both as to people and in his analysis of ideas, whether in discussions or in his writings. Before composing this, I revisited some of David’s articles, which in addition to more typical subjects, included a lost treasure *Rethinking Rethinking*, a thoroughly witty gentle chiding of academics for taking ourselves too seriously. Ultimately, I was most touched by the way in which David responded to his illness during these last three years. Needless to say, David’s courage and dignity shone through as a beacon that those of us who tend to be more self-centered could only marvel at. Yet what I will never forget is David’s optimism in the face of pain and adversity, and his productivity until the bitter end.

At most, he would mention his frustration, but end by saying, “basically things are OK,” whether or not they were. In the same vein, while describing his upcoming surgery as “very low risk for someone of my age and general state of health,” David could not resist adding, “Reminds me of the line, ‘Other than that, Mrs. Lincoln, how was the play?’”

While others can attest to his dedication to teaching and deaning, I saw firsthand his continued contribution to *Criminal Justice* magazine. I should preface this by saying that David was always incredibly diligent about his work for the magazine. In particular, he never saw an article that wasn’t a candidate for his redlined tracking program. My favorite of his comments about this was when he wrote the following in his email: “I tried hard not to edit, but after getting about half-way through I couldn’t resist.” I have to admit I would hold my breath whenever I got back David’s edits of my own articles, and counted myself lucky if red wasn’t the predominant color. Needless to say, David’s editing made him one of our most valued members, and reflected his commitment not only to the magazine and its readership, but also to making every article the best it could possibly be. Illness did not diminish his editing, nor his reaching out to others to provide us with interesting topics and authors. Shortly before his death, David realized he could no longer continue chairing the magazine board because his health had taken a distinct turn for the worse, which led even him to reference his pain, yet true to his unassuming nature David included an apology for slowing down in the last few months. I regret that it’s unlikely David ever saw my response to his email commending him for his efforts, and that I did not have an opportunity to see him again, and I’m thankful to have this opportunity to pay tribute to him.
