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Professor Colin Miller[48]

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*

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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.

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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-

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