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### In Memoriam: David P. Leonard

Victor J. Gold

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## IN MEMORIAM

### DAVID P. LEONARD

The editors of the *Loyola of Los Angeles Law Review* respectfully dedicate this issue to David P. Leonard, Associate Dean for Research, Professor of Law, and William M. Rains Fellow.

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#### *Dean Victor J. Gold*<sup>1</sup>

This issue of the *Loyola of Los Angeles Law Review* is dedicated to David Leonard, who passed away in February 2010. David was a member of the Loyola Law School faculty for twenty years and served both as Professor of Law and Associate Dean for Research at the time of his death. The following are essays from several of David's colleagues here at Loyola who, over the years, shared many laughs and a few tears with David: Ellen P. Aprill, Richard L. Hasen, Yxta Maya Murray, Katherine T. Pratt, Marcy Strauss, and Georgene M. Vairo. In a testament to David's prodigious scholarly accomplishments, you will also find here tributes from some of David's co-authors: Anita Bernstein, Richard D. Friedman, and Roger C. Park. Finally, we include several essays from other members of the academy who knew David as a good friend: Kenneth W. Graham, Jr., Edward J. Imwinkelried, Laird Kirkpatrick, Colin Miller, and Myrna S. Raeder. I was fortunate to be a member of each of these groups.

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1. Fritz B. Burns Dean and Professor of Law, Loyola Law School Los Angeles; and Senior Vice President, Loyola Marymount University.

David loved to laugh. And so, because he would enjoy it, I begin this essay with a joke.

One day the most despised man in a small *shtetl* in Poland died. The entire village turned out for his funeral. At the end of the service, the rabbi said, "As you all know, it is our custom at this time to call upon anyone who would like to say something good about the departed." Anticipating what was on the minds of all in his audience, the rabbi added, "Remember, it has to be something positive." A long, awkward silence followed. Finally, a little old man in the back of the crowd stood up and said, "His brother was even worse!"

Nobody who knew David would have difficulty saying something good about him. In fact, once you get started, it is hard to stop. He was deeply compassionate, gentle, funny, brilliant, and humble. All these qualities were reflected in his teaching, which he loved. A few weeks before his death, he told me how sad he was at the prospect of never teaching again. So I want this essay to give David a chance to teach us one more time by focusing on some of the thoughts he expressed in his writings.

David often wrote about the dangers of character evidence. One of his many insights was that, for the same reason such evidence poses problems when used in court, disparaging another's character in a social setting damages not just the target of such remarks but also injures society and demeans the speaker. Here is what he had to say in one of his journal articles about the Talmudic rules regarding *loshon hora* or evil speech:

Our petty daily character judgments, when voiced, can be the source of the kind of hatreds that divide us as nations, as cultures. Our judgmental words deny the goodness and value of others. . . . To speak ill of others not only hurts the subject, but also the speaker. To demean others is to demean oneself; though there might be momentary gratification in passing along such information, to do so leads ultimately to unhappiness and bitterness in the speaker. . . . On the other hand, to hold one's tongue, or to speak well of others, expresses the unity of people, engenders mutual respect, and "creates a greater sense of closeness and trust with one's friends and neighbors. . . . [W]ithout creating enemies and derogating others, there is

still much to be said. The words that remain are those that can be spoken gently, that relate positive judgments and cement the bonds among friends.” By giving voice to our petty daily character judgments, we encourage the kind of hatreds that divide us. Our judgmental words deny the goodness and value of others. To speak ill of others not only hurts the subject, but also the speaker. . . . To speak well of others expresses the unity of people, engenders mutual respect, and “creates a greater sense of closeness and trust with one’s friends and neighbors.”<sup>2</sup>

In another article, David described what it would take to repair our city in the wake of racial conflict and police abuse of power. Again, David’s focus is on the aspects of the problems that alienate people from one another:

There are many lessons to be learned from the Rampart scandal. To me, the most important is the need to open our minds to certain truths about our communities that we would rather not know. There are people with whom we share this community who do not share our experiences of the world, and whose chances of fulfilling the dream of prosperity are thwarted by the very system that has welcomed our participation and supported our successes. Harmonious interactions among us depend on recognizing that not all people see the world as we do. Walking a mile in other people’s shoes is not easy, but it is crucial that we try.<sup>3</sup>

David’s writing also reflected his understanding that both legal and social problems often emerge from the failure to understand others and value diversity. Here is what David had to say about the people he could see from his office window:

Just across the street from Loyola Law School is the Tenth Street Elementary School. Almost all of the students who attend the school are the children of recent immigrants, and

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2. David P. Leonard, *In Defense of the Character Evidence Prohibition: Foundations of the Rule Against Trial by Character*, 73 *IND. L.J.* 1161, 1191 (1998) (quoting SHIMON FINKELMAN & YITZCHAK BERKOWITZ, *A LESSON A DAY*, at xxxix (1995)).

3. David P. Leonard, *Different Worlds, Different Realities*, 34 *LOY. L.A. L. REV.* 863, 890 (2001).

almost all of their families struggle to make ends meet. From my office window in the Burns Building, I often watch as parents walk their children to school, frequently hand in hand. These people are not criminals. They are doing their level best to make a life in Los Angeles, but they are being subjected disproportionately to crime, and the police often treat them as vermin. I am ashamed that a nation formed by waves of immigrants has turned its back on these people, and that rather than protect them from the common criminals who victimize them, victimizes them further. These people have important contributions to make, if only we treat them with the respect they deserve. We must open our minds and broaden our vision, recognizing that the differences among the people of our communities should not be feared, but present opportunities for the enrichment of us all. We are not all the same, thankfully. When we come to recognize that our differences are a source of strength, not weakness, we will be one step closer to avoiding the fate of the Balkans, and to achieving a lasting peace in our city.<sup>4</sup>

These are the lessons that David taught us. Every person has an essential, unique, and irreducible quality that defines his or her very soul. David's essence, reflected in his writings and in his acts, was compassion. David's illness did not dull his compassion, it made that compassion stronger. In fact, his empathic understanding of the suffering of others was deepened by his own pain. He was afraid to die, but he did not withdraw into himself out of that fear. He was sad at the prospect of leaving those he loved, but he did not allow sadness to steal from him the chance to use what little time there was left to help them. And he suffered physically these last years, but through all the surgeries and treatments and side effects, he never lost his ability to think of others.

Instead, a year into his illness he eagerly embraced a new job as Associate Dean. He relished this job because it gave him a fresh chance to help others, solve problems, and make peace. David always lived the values about which he so often wrote and taught.

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4. *Id.* at 892–93.

But in his last months, in the very shadow of death, he taught us his greatest lesson.

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*Professor Ellen P. Aprill*<sup>5</sup>

When I retired from being an associate dean after serving in that position for four years and returned to being a full-time faculty member, David and I switched offices—he moved into the office I had had in the dean’s suite, and I took over the office he had occupied for almost twenty years.

He had served his first year as associate dean staying in his faculty office on the third floor of Burns. He wanted very much to experience, for whatever time he could, given the state of his health, the rhythm of life in the dean’s suite on the second floor, and immerse himself in the constant stream of visitors and issues and have the ability to call out to the other deans for advice and support. When it came time to move, however, he felt, naturally enough, some ambivalence about leaving the space that had been like a kind of home for so many years. He proudly told me what a good office it had been. He gave me advice on where I might put chairs or a table and whether I could add a bookcase, and about a drawer that needed repair or replacement. He packed up his posters and collection characters from “The Simpsons” to move to my former office.

I have been in his old office for not quite a year now. I continue to feel David’s presence very strongly, some days more than others, of course, but still with a sense that it is somehow our office and that he is there with me. Sometimes the thought of him makes me smile and laugh—he was among the neatest of people and I am anything but. I will think, for a moment, that he would be appalled were he to see his old office so messy, but I quickly remember that he was perhaps the kindest and most accepting human being I have ever known and almost hear him saying to himself, with a smile, “If being

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5. John E. Anderson Chair in Tax Law, Loyola Law School Los Angeles.