

TRIBUTE TO LAURENCE H. TRIBE

It is a pleasure for me to join in the celebration of Professor Tribe and his work. I am privileged to call Larry a friend as well as a former teacher and colleague.

But to talk about Larry takes me back to my years in college at Georgetown—over 35 years ago. President-elect Sexton likes to talk about the first time that we met, which was when he judged me in a high school debate tournament at Fordham University. Indeed John even pretends to remember the building and the room. My memory is not that good but I do know that the first time that I met Larry was in connection with intercollegiate debate when I was a young intercollegiate debater at Georgetown. Larry was a recent national champion debater from Harvard and stayed active in judging debate and overseeing the Harvard debate program. For me he was a person of intimidating intelligence and eloquence, an *éminence grise* around the debate circuit. I was pleased to coach the Harvard debate team when I was in my third year of law school and Larry was still the overarching presence, the person people looked up to for guidance, and the person whom you did not want to disappoint. I think that Larry's excellence in intercollegiate debate together with his formidable intellect and mathematical training at Harvard College provide important insights into why his legal work combines such eloquence with the ability to draw precise analytical distinctions.

I was also privileged to have Larry as a teacher at Harvard Law School in his early days of teaching. Larry taught me evidence—not a subject that he is ordinarily associated with, but he was a superb teacher—clear, dedicated, and caring for the students. I know from talking to Larry over the years how important teaching is to him. He has almost never missed a class for any commitment, and he is flawlessly prepared. In the late 1960s the Socratic method was somewhat more rigorous and somewhat less forgiving than it is today. I can still recall some of the questions from that class that I struggled to answer. Is the label on a can of soup hearsay when it describes the ingredients? If so, who is the speaker? And we did learn. The analytical framework for the hearsay rules was so illuminating that I use it today thirty years later in understanding hearsay even though those evidence classes were taught before the Federal

Rules of Evidence were adopted. Indeed Larry published some of that analysis in his early article called *Triangulating Hearsay*.¹

That ability to conceptualize, to systematize, and then to explain clearly is what makes Larry's treatise on constitutional law² so indispensable. The treatise is of substantial value to judges because it takes the significant body of constitutional law and explains where it came from, where it is today and where it may be going. The commentary is clearly explained as such. Whether readers agree or disagree with the conclusions, they can understand the basis for the reasoning and the cases that lead to the conclusions.

Thinking back over twenty years ago to the time that Larry conceived of and then labored over the first edition of the treatise, it is breathtaking to think about his courage and fortitude in taking on such an enormous task. The preface to the first edition is almost biblical in its introduction and statement of the task at hand:

This treatise ventures a unified analysis of constitutional law. I have been tempted to state a more modest purpose, hoping to be measured by a more generous standard than this claim sets for the work, but that just wouldn't wash. The book has been too long in the making, its scope too obviously embracing, for me to offer it as merely a collection of tentative, disconnected observations on constitutional topics . . . or as only a student guide My conclusion . . . is that . . . only a systematic treatment rooted in but not confined to the cases, sensitive to but not centered on social and political theory, can offer a clear perspective on how the doctrines and theme of our constitutional law have been shaped, what they mean, how they interconnect, and where they are moving.³

I have mentioned courage and fortitude. There was fortitude because of the arduous work that was required to produce a treatise of such huge scope. Anyone who knew Larry at that time knows the long hours and sleepless nights that actually went into writing the treatise. And there was courage. There was the courage to face the task and endure, and there was the courage to be prepared to state your views candidly on the enormous scope of constitutional law issues.

Speaking about courage, I am reminded of the time when Larry had become embroiled in a very public debate. Larry was giving a talk at the New York Public Library. After the talk there

1. Laurence H. Tribe, *Triangulating Hearsay*, 87 HARV. L. REV. 957 (1974).

2. LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW (3d ed. 2000).

3. *Id.* at xv.

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was a question and answer period and Larry was asked by one questioner, "Aren't you concerned that the views you have expressed about Supreme Court appointments might some day come back to haunt you if you are ever nominated for the Supreme Court?" Larry responded: "If there is a person who is so timid that the person is unwilling to express their views, and at the same time so arrogant that they think they should be on the Supreme Court, that person does not deserve to be on the Supreme Court in any event." Courage.

I mentioned at the outset that I was also privileged to be a colleague of Larry's. In addition to being a teacher and scholar Larry is a superb lawyer and advocate. When I was still a practicing lawyer at my former firm, when we had a difficult constitutional law issue, we called on Larry for assistance and he was a wonderful advocate. He has a great ability to argue persuasively in briefs and at oral argument, to analyze difficult issues in innovative ways. I remember having the joy of watching Larry argue the *Pennzoil v. Texaco*⁴ case before the Supreme Court, even though that was not a case in which we were working together. Larry prevailed before the Court in obtaining a unanimous reversal of a decision from the Court of Appeals for the Second Circuit in a case that affected one of the largest civil damages recoveries in history.

And finally, I mentioned friendship. It has been a joy to be a friend of Larry's for over thirty years. Larry has been instrumental in two of the most important opportunities for public service in my life. Larry was Chair of Justice Stewart's Clerkship Committee at Harvard on which he served with Professor Cox and Professor Freund. They recommended me for that clerkship and gave me the opportunity to clerk for a brilliant and wonderful Justice. Justice Stewart, together with Judge Weinfeld for whom I clerked the previous year, taught me the joy and value of public service. Two decades later, Larry wrote a letter of recommendation to Senator Moynihan recommending me to be a United States District Court Judge. It was such a remarkably detailed and persuasive letter that one of the members of Senator Moynihan's Selection Committee mentioned that he wished he knew someone who could write a letter like that about him. I am very appreciative for the continued opportunity for public service that Larry helped to make possible.

It is a pleasure for me to join in these tributes to Larry. His teaching, scholarship, advocacy and friendship make us all better.

4. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987).

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To paraphrase what Paul Freund once said of Henry Hart, his light shines on generations to come.

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Judge
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