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# WASHINGTON AND LEE LAW REVIEW

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## A Tribute to Lewis H. LaRue

Andrew W. McThenia, Jr.\*

### *"A Caring Contrarian"*

The title of this tribute may seem oxymoronic. One does not normally think of contrarians as suffering much humility or being warm and fuzzy types and so my description of Lash might seem to jar. But the more I think about it, the more accurate it seems. Lash is not your ordinary run of the mine contrarian—the sort of thorn looking for a side into which to stick. But he does not hesitate to challenge the conventional wisdom at every turn. Others have described him as "an iconoclastic lawyer."<sup>1</sup> And that is not bad, but it says at the same time both too much and too little. The word suggests a violence that is foreign to Lash. The initial iconoclasts were about destroying what they believed to be graven images and cutting off the hands of their adversaries. But the description is also incomplete. Iconoclasts attack what is perceived to be heresy. They often do not have as their targets the respectable vices which take refuge under the eaves of the church.

Lash, in true contrarian form, is not adverse to exposing to the harsh light of day our respectable vices as well as our heresies. For nearly four decades, he served that function with brilliance on our faculty in most matters involving our corporate life. He always did his best to insist on integrity in matters of faculty governance. Sometimes when we seemed on the verge of taking dissembling

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1. Stanley Hauerwas & Jeff Powell, *Creation as Apocalyptic: A Homage to William Stringfellow*, in *RADICAL CHRISTIAN AND EXEMPLARY LAWYER* 34 (Andrew W. McThenia, Jr. ed., 1995).

action, the clear effect of which would have been to abrogate an existing policy by calling it a special case, he would gently remind us that maybe we ought go on and change our policy so that we could honestly practice what we preached.

Where does the caring part of the title show up? One episode says more than a volume. Some years ago we had a wonderful senior colleague, Bill Ritz, who had labored long and hard on some important questions surrounding the Judiciary Act of 1789. As he was beginning to pull his research together and get his thinking into book form, he suffered a tragic and debilitating stroke which left him speechless and unable to write. Lash and a friend, Wythe Holt, picked up Bill's project and turned it into a very fine book.<sup>2</sup> This act can only be described as a labor of love for a friend and former colleague. It says something very revealing about this contrarian's sense of community.

To read the LaRue canon is to see both the contrarian and caring traits throughout. Lash loves books and it is not surprising that he has over the years reviewed more than a few. I have read most of those reviews and they tend to have an interesting format. First, he describes accurately what the book is about. Then he attempts to state with simple clarity the author's thesis. Without fail, he makes clear whether he plans to discuss the validity of the thesis or the execution of it. His footnotes always disclose that he has sent a prepublication draft of the review to the author for comment. If he disagrees with the book, he prefaces his disagreement with an admonition to the reader that she ought to read the book and make up her own mind.

His longer writings exhibit the same sense of humility while cutting against the grain of traditional thinking. I have found myself reading a LaRue piece and being gently led down a road that I would not, in all likelihood, have traveled. But along the way, I find myself making connections with thoughts of my own which are sometimes deeply hidden and always inadequately formed. As I chew on his text, I feel as if I am encouraged to disagree and to strike out on my own path.

What makes this contrarian so interesting? I am not sure I know, but I think it has not a little to do with the fact that Lash is fiercely antitheoretical.<sup>3</sup> He faces the world with few preconceived notions and even fewer illusions. And he is not afraid to look in some different places for that rare commodity known as truth. He once wrote that "[w]hen we sit down to rest, the best any of us can hope for is that someone might say of us . . . that we were [quoting one

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2. WILFRED J. RITZ, *REWRITING THE HISTORY OF THE JUDICIARY ACT OF 1789: EXPOSING MYTHS, CHALLENGING PREMISES, AND USING NEW EVIDENCE* (Wythe Holt & L.H. LaRue eds., 1990).

3. See L.H. LARUE, *CONSTITUTIONAL LAW AS FICTION: NARRATIVE IN THE RHETORIC AGE OF AUTHORITY* 148–49 (1995) (discussing the difficulty of theories).

of his favorite authors, Norman Maclean] 'basically on the right track when we were wrong.'"<sup>4</sup> He is on a journey that will continue and I am certain that he will remain on the right track. I do not know enough to offer an opinion on whether Lash is right or wrong about his views on constitutional law. But after having been privileged to spend some thirty-plus years as his colleague and having enjoyed his friendship for more than four decades, I can say with some assurance that he has been on the right track all those years. And as he changes lenses and devotes more time to another of his passions, photography, he will still be looking for the truth. And what he discovers in the next chapter will also be "strange and wonderful." Thank you Lash for being a friend and a truth-teller for a lot of years, especially when I did not want to hear the truth.

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Sanford V. Levinson\*

I am old enough to know the source of Lewis LaRue's nickname, for I well remember many happy Saturday afternoons in my home town of Hendersonville, North Carolina watching the adventures of Lash LaRue. But I have long since forgotten anything I ever learned from watching amazing feats in the use of the lash against bad guys. Fortunately, that is not the case with the "other Lash LaRue," from whom I have learned a great deal that continues to be reflected in my teaching and writing. It is, therefore, a special pleasure to be able to participate in this tribute to a truly great teacher whose domain extends well beyond his classroom.

I do not remember when I first met Lash, but I do remember being perplexed, when I asked him about his constitutional law course, at being told that he used no existing casebook because he preferred to teach his course chronologically. At that time all existing casebooks divided the Constitution into clauses and then taught them as if they had almost nothing to do with one another. What perplexed me then I take almost as gospel now. Indeed, Lash has probably been the "ideal reader" in the back of my mind as I have worked, over the past quarter century, on the constitutional law casebook initially created by Paul Brest.<sup>5</sup> Over the years, it has become ever more chronological,

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4. *Id.* at 153.

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5. PAUL BREST & SANFORD LEVINSON, PROCESSES OF CONSTITUTIONAL DECISIONMAKING:

and I now share Lash's near disbelief that one could possibly approach the subject in any other way. That is, perhaps, the central thing I learned from Lash.

But it is surely not the only thing. His marvelous book *Constitutional Law as Fiction: Narrative in the Rhetoric of Authority*<sup>6</sup> led me to read *McCulloch v. Maryland*, a case that I obsess on to the same degree that many of my colleagues obsess about *Marbury v. Madison* (a case I do not teach), in some quite new ways. It was Lash who led me to appreciate, almost as if I were reading it for the first time, the remarkable assumptions that Marshall was making about the forthcoming American Empire that would extend the country to the Pacific Coast (and, by the beginning of the Twentieth Century, the mid-Pacific) and the concomitant duty of the Court to interpret the Constitution in a manner that will facilitate its achievement. He also preceded me in the recognition that the Second Amendment is a truly interesting part of the Constitution.<sup>7</sup> And his contribution to the book that Bill Eskridge and I co-edited, *Constitutional Stupidities, Constitutional Tragedies*, in which he identified life tenure for members of the Supreme Court as the stupidest feature of the Constitution, was truly prescient.<sup>8</sup> He says more in four pages than do most law professors (or others) in articles of many times that length.

I regret that our paths crossed only occasionally over the years, twice at Washington and Lee, and several times at professional gatherings. I was always aware that I was in the presence of someone worth listening to, who was also obviously a very nice guy to boot. I envy those who had him as one of their on-premises colleagues. I do take some comfort, however, that I can genuinely call myself a student of Lash LaRue, happy to salute him as he (at least formally) retires from the Washington and Lee faculty. I hope he spends many happy years in Lexington, enjoying life and dispensing wisdom. I hope that some of that wisdom will be written down so that I, and others, can continue to learn from this wise and learned man.

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CASES AND MATERIALS (3d ed. 1992).

6. *Supra* note 3.

7. L.H. LaRue, *Constitutional Law and Constitutional History*, 36 BUFF. L. REV. 373 (1988).

8. L.H. LaRue, "Neither Force Nor Will," in CONSTITUTIONAL STUPIDITIES, CONSTITUTIONAL TRAGEDIES 57 (William N. Eskridge, Jr. & Sanford Levinson eds., 1998).

James Boyd White\*

Lash has been a good friend for many years, and it is a pleasure to have this opportunity to reflect about him. I well remember our first meeting, in the late 1970s. He had been to a meeting in Wisconsin—the first meeting of the Critical Legal Studies Conference, as I remember—and stopped to spend the night in Chicago on the way home. We had corresponded a couple of times, but never met, and what a pleasure it was to meet him: full of intelligence, openness, and laughter, with a moral center and a deep sense of human limitation. We talked and laughed by the fire until late in the evening. This was one of those occasions when you meet someone for the first time and just know that you will be friends.

A year or two later, Lash joined a National Endowment for the Humanities faculty seminar I was directing, again in Chicago. This seminar was a great experience for me, and I think good for the other participants, who were a stellar group, including, among others, Lash, Jim Elkins, Fran Olsen, Craig Lawson, Peggy Kniffin, and Peter Teachout. We read together books by Homer, Thucydides, Plato, Swift, Austen, and Burke, as well as legal texts, trying to put them all together with a set of questions that would run across these fields. The conversation was wonderful, and Lash was right at the center of it: always informed and thoughtful, alive and good humored. He did much to give shape and direction to the whole process in which we were engaged, to the benefit of all of us; and in doing so he gave me the gift of confidence in the work I was doing, at a time when that was necessary. I think perhaps nothing marks a great teacher so much as what Lash demonstrated: the capacity to make others feel confident in the value and workings of their own minds. For this I am and always will be deeply grateful.

In the twenty-five years from that day to this, we have talked, in person, on the phone, or by mail, over and over, and, as anyone who knows him would expect, about the widest range of topics—from rhetoric to mathematics to evidence to linguistics to the Greek language and the dialogues of Plato. What stands out in these conversations, as in his writing, is an essential (and rare) quality: he is constantly thinking about what matters to him on the merits, because it is interesting and significant and important to him, not for instrumental or ulterior motives. He is an independent mind and person, making his own way through the world. He means what he says, and he says

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what he means. His criticisms, from which I have frequently benefited, can be demanding and tough, but his generosity and loyalty are even more remarkable.

I know I am not the only person who owes a comparable intellectual and personal debt to Lash, and who feels grateful, as I do. I can only imagine with some envy what it would be like to have him for a colleague year after year, as the practical and intellectual problems that confront a law school arise in all their vigor. I am sure he was a constant force for wisdom, maturity, and moral quality. Even at a distance, I have benefited enormously from the constant stream of ideas he produces. A remarkable man. I am lucky to have him as a friend, and his colleagues and students at Washington and Lee are lucky too.

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Wythe Holt\*

I was in line at a cafeteria, feeling like something of an outsider. It was sometime in the late 1970s; more particularly it was lunchtime on the first day of what I supposed to be the first meeting of the Critical Legal Studies "movement." The gross irony of having a giant conclave of left-wing law professors at Harvard Law School was submerged under the excitement generated, for me, at this hopeful termination of my seeming solitariness. I was a Marxist teaching law at the University of Alabama, and if I did not expect to discover immediately a cell of radical law professors with a plan for bringing in socialism, I longed for validation of my materialist positions, or at least connection and materialist conversation with other lefties seeking justice for all, particularly justice for the poor.

The morning's talks from CLS's conveners had, however, convinced me that there was a long way to go. "Critical Legal Studies" seemed not very critical in this time of The New Left—soft, liberal rather than radical; concerned more with words than action, more with ideas than material life, more with talking in snooty postmodernist lingo than with connecting to the problems and aspirations of working folk. CLS was not only not Marxist, several of its gurus seemed to share the suspicion and hatred of Marxist thought that many of my mainstream and right-wing peers exhibited, while a couple of others, who once had identified themselves as Marxist, seemed to be in the process of rejecting that worldview and approach. No one, at any rate, had spoken up for what would have been an alternative, materialist viewpoint.

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My few acquaintances present at the meeting—mostly people I had met during the year I had previously spent at Harvard on a fellowship which, miraculously if not equally ironically, had allowed me to immerse myself in Marxist studies—all seemed caught up in uncritical support for CLS's program. They were much too busy being, or talking with, the conveners to spend much quality time with me, much less engage in debate over the meaning of "the left." I was still on the outside.

But no! The conversation of the two fellows ahead of me in the cafeteria line was definitely of a materialist nature. They appeared to be slightly older than myself, and were engaged in serious debate of the same critical nature as my own thoughts on the morning's talks. Could it be that I had found what I was looking for? The two indeed turned out to have imbibed deeply from the well of Marxist thought and analysis, and—though neither retained CLS membership because of that group's postmodernist core views—they became and remained my good friends, and were the very persons I needed to give me Marxist materialist conversation, assurance, and friendship. One was the late Burt Wechsler of American University Law School. The other was Lash LaRue.

As he did with others of his colleagues and friends, Lash proved to be much more than an intelligent materialist friend for me. He became one of my mentors, one of the people whose actions and thoughts have helped me to shape my own. Lash is the deepest and broadest of thinkers, both careful and well grounded and a bold visionary whose insights prove breathtaking and illuminating.

He had come to Marxism as I had, not as a "red diaper baby" or because of left-wing professors or from working in struggle alongside left-wing labor progressives, but from his own education and investigation of the world's ills. And, unlike me at the time, he was much more than a Marxist. Lash is no doctrinaire, no puppet of a given theory, no member of a vanguard party striving to find the correct left line in order to lead the workers to victory. The best of accolades applies to him: he thinks for himself.

For example, he—and eventually I—also found very worthwhile the philosophy of Socrates. For me, Socrates adds to Marxist insights the moral human command of consistency, such that to believe in and work for democracy one must be true to the egalitarian and mutual notions that are inherent in the meaning of the word, and thus must reject the fatuously dictatorial vanguardism and "democratic centralism" which many Marxists have treasured. The end does not justify the means. Lash LaRue often has a different take than I do on Socrates, his philosophy, and his worth, but it was only through the many gentle but arrow-focused conversations I had with Lash



that I began to complicate my Marxist materialist worldview in these and other useful ways.

Lash is one of the greatest teachers I ever enjoyed. He helps his students to prepare fully for their life's work, being concerned (like Socrates) with their souls as well as with their work and their learning. As a teacher he finds mentorship easy, perhaps even no different from friendship. As his friend and mentee, I have tried to make our relationship as reciprocal as possible, but I am sure there is much more on my ledger, given by him, than vice versa.

It can be somewhat scary to engage in conversation with him, because he neither hides nor dissembles, and his perceptiveness and rhetorical powers are amongst the greatest I have been fortunate to encounter. Lash's friends often find that something they thought engraved in stone—something correct, dear, important, and unchallengeable—has suddenly dissolved. I have learned from him that "learning" without investigating and perhaps changing a fundamental premise, without the unsettling consequences for the rest of one's life which real insight entails, is not learning at all. Everything is up for grabs, and, thanks to Lash, I know that to encounter the possibility of genuine change is joyous, not frightening, usual, not odd.

Lash also is the embodiment of scholarly generosity. When his colleague and our friend Bill Ritz was unable to complete the book manuscript that summarized most of Bill's work, Lash asked me to join with him to complete it. Since Bill and Lash were my friends, and since my own work in U.S. legal history concerned the same subject-matter (the early history of the federal court system), I agreed.

The job took more than a year, even though Bill's prose containing his startling conclusions about Section 34 of the Judiciary Act of 1789 was largely done, if not well arranged. We collaborated via telephone, fax, and email, and I was also able to spend several weekends in Lexington. Working together with Lash was great fun. Our rhetorical styles differ, and we had somewhat different ideas about how properly to edit another's manuscript, but the work went well. We did not trample upon each other's toes but conversed thoroughly; we divided the manuscript and completed our own tasks, then talked over each other's work, eventually making many new adjustments and some retrenchment. Lash respected my conclusions, as a historian, even when he had some suspicion of them, just as I was sometimes suspicious of his philosophical prose but yielded to his judgments, and we each gave the other the benefit of the doubt. As a result, Bill's magnificent work received the attention that it was due.<sup>9</sup> He lived long enough to approve and thank us for our work, and the

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9. *Supra* note 2.

whole process felt invigorating and fulfilling, especially Bill's blessing for it (for Bill himself was a stern and demanding taskmaster).

I suspect that any work with Lash would produce the same good feelings. I salute him in this year of both of our retirements. Lash LaRue has made the world a better place, through his work, and through his life.

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Toni M. Massaro\*

*For Lash: Who Asks the Right Questions*

My first memory of Lash LaRue is of a fiercely intelligent professor who would—I knew—have much to say in whether I would receive an offer to join the Washington and Lee faculty back in 1982. As I have learned in over twenty years of law teaching, every faculty has members who are especially attuned to safeguarding the intellectual verve of the place, and do so with a remarkable ability to address (or, as Toni M. Massaro need be, dress down) each candidate on his or her own merits. Lash is one of these colleagues, and excels at it. I managed to escape his scrutiny then, and still consider this one of Lash's few lapses. My time at Washington and Lee was one of the best of my professional life, so I am grateful Lash winked.

My second vivid memory shows another side of Lash—one I valued every bit as much as his keen intellect and capacity for close questioning and dismantling of shoddy thinking. He sent a personal note to me before I moved to small-town, collegial Lexington—fondly known as "Metrolex"—from urban-tough Chicago. He offered to help me unload my belongings, with the assurance that although his was "not a strong back," he had genuine enthusiasm for my arrival.

Both first impressions proved to be reliable. Lash is always keen on ideas, and always generous with colleagues. Like the Washington and Lee faculty as a whole, Lash demonstrates the best of what a community of scholars can offer: rigorous analysis, deeper inquiry, and genuine concern for others.

Lash was a vital part of my nurturing and "early childhood" as a law professor. He gave me books to read and encouraged me to one day deploy

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what seemed a far-off fantasy at the time—a *sabbatical*—to pursue knowledge for its own sake. He told me that our role as professors is noble, difficult, and truly audacious: we are expected to increase the world's store of knowledge.

When I faltered at the scary threshold of beginning my scholarship in earnest, he said, "Write about what makes you outraged!" When I hesitated at suggesting that the Supreme Court should wholly abandon a course of action because the Court almost surely would reject that suggestion, Lash admonished, "Professors must urge outcomes they believe are correct, not ones they believe will prevail." My office was a few doors down from Lash's—not far enough, thank goodness, to be out of earshot of his distinctive and frequent laugh. Lash sees the humor, the utter inanity, of so many things in life and law.

Lash is also scary smart, and relentless when he gets a whiff of sophistry. I remember a hapless candidate for a position on the faculty who delivered a talk on the First Amendment. The candidate spoke after a faculty lunch at which iced tea and sliced lemons were served. Lash listened intently to the remarks, then began to frown and shake his head vigorously in disagreement with the thesis. Just before he raised his hand to speak, he bit down hard into a lemon slice and grimaced. With that taste in his mouth, he delivered a very sharp and precise stab at the candidate's argument—though not at the candidate. I watched this performance as any young professor would—aflush in miserable empathy for the speaker. But I also learned, at the poor candidate's expense, the importance of nondefensive venting of arguments in order to improve them *before* the ideas hit print. I saw that Lash could teach me a great deal about lapses in my own writing and thinking. It would be a bracing experience to be sure: he would not pull his punches, or skim a piece in order to deliver polite but meaningless praise. But I would be a better writer for it.

I have a third, vivid memory of Lash that requires some backdrop for readers who may not know much about Washington and Lee's physical setting. The town of Lexington and the Washington and Lee University community are, in my memory, inextricably bound. "Town and gown" are entwined there in ways I have never seen elsewhere in legal education. One manifestation of this was remarkably cross-disciplinary and cross-professional turnouts for lectures and other events of public interest. This makes for especially rich opportunities to make friends beyond the academy, friends who enrich faculty lives immeasurably and round out one's life as a law professor.

Another feature of Lexington that fostered close relations was the relative absence of a restaurant scene (unless one counts "Spanky's" or the "Keydet General" as fine dining). When I was there, the faculty, to a person, cooked and entertained each other, often and well. I believe I had dinner in the homes

of each of my colleagues at one point during my time there. How many professors can say the same? Likewise, we entertained our out-of-town visitors in our homes. Sometimes, we combined our efforts and cooked together for our guests. How many teachers learn from colleagues to prepare brussel sprouts by slicing small x's in the stalks?

Communal exchange at Washington and Lee took other forms as well. When the many gardeners on the faculty planted tomatoes, they brought bags of them to school as offerings. We ate them fresh, like apples. We made tomato soup. We made tomato salad. We enjoyed tomatoes in every way possible while the season lasted. How many colleagues grow crops for each other?

Lash is an important link in this marvelous, welcoming chain. I recall in particular a spectacular LaRue family dinner: Lash's crown roast of lamb, his wife and their (then) children, sharing a home cooked feast and an animated conversation about politics, civil rights, and the state of our world. We had a terrific evening that remains in my mind's eye a model of academic warmth and hospitality.

Lash's offerings, of course, are not restricted to food or to Lexington denizens. His scholarship has extended his reach and influence to the whole academy. A dip into Lash's scholarship betrays the scope of this iconoclastic mind. His topics include defamation, federalism, rhetoric, antitrust, legal ethics, literature, the American jury, and problems of proof, among others. In each piece, his take is unique, thought provoking, and fresh.

His many works reveal that the "Law according to Lash" is replete with stories, scoundrels, illogic, myths, and slavish adherence to practices and arguments that cause great harm. Yet the work also betrays Lash's fundamental belief that law and its guardians—judges, lawyers, law professors, and even administrators—can perform great good. He sees poetics there, and shining possibilities. Consider the following exchange, in which Lash responds to my request for advice about how to be a good dean:

As you note, you have responsibility without power. Deans have no power, except over matters janitorial. It is a little known fact. Or perhaps a more accurate statement would be: a dean has no power to do good, but a lot of power to cause harm. In short, the job is the same as being a teacher. One has no power to make students (now faculty) learn. But one can do things that will get in the way of their learning. And every once in a while you can help. But you can't learn it for them, or make them learn.

Well, those are the two big things that I think I know about being a dean. There is a further matter about being a really good dean. You need to ask the question: why aren't we doing what we know that we should do, what we in fact want to do? As you know from being a teacher, asking the

right question is the most important thing that you can do. So what is the right question? I may be wrong, but I think that this is it.

I agree that "this is it." In fact, the cord that binds together all of Lash's contributions is the effort to ask the right question. This is the heartbeat of his teaching, of his writing, and of his life beyond both.

Thank you, Lash, for your uplifting faith that we *do* know what we should do, and need only muster the courage to do it. May we all ask the right questions and face up to the answers. Above all, may the next phase of your life bring you much fulfillment, more time to read and write, and the enjoyment of your abundant passions.

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H. Jefferson Powell\*

Dear Lash,

If you want to get ahead in the line of work you and I have chosen, there are some pretty clear rules of thumb. Let me restate a few of the most important, perhaps a bit more crudely than is the custom in discussing them with the young, so that it will be clear what my complaint is . . . and I do have a complaint.

First and foremost, publish all the time. Let not the sun go down, or at least not more than a few months pass, without one (minimally) or more (excellent!) manuscripts crowding the mail boxes of your colleagues, the great and even the modestly important scholars in your field, and of course the law reviews. Put aside all scruples based on ideas such as publishing only when you have something to say or treating scholarship as the product of serious and fair-minded reflection: all such notions are heresy and lead to such abominations as a decision not to publish something you have spent time on, merely because you are not sure it is right. And don't hesitate to say the same thing repeatedly: it is egregiously inefficient, indeed a clear case of economic waste, not to use an idea as many times as the market will bear.

Publish well. I do not mean, of course, that you should only publish real contributions to our understanding of the law (see the previous rule). The point here is that the leading law reviews are where you want to publish

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\* Professor of Law and Divinity, Duke University Law School.

ideally, and you should work the system as hard as you can to approximate that ideal. That can involve some unpleasant moments when you have to put the editors of review number 24 in their place behind review number 23, but no pain no gain. Don't get side-tracked by writing for other contexts (books, journals other than law reviews, etc.) until you hit your stride and can write effortlessly for all settings all of the time.

Maintain priorities. The temptation to spend too much time thinking about how to teach well is a diversion; creative teaching requires hard intellectual work and is therefore a clear drain on the resources you can bring to bear on moving upward in our profession. There are exceptions: getting taken on as junior editor of that flagship casebook *Gaius and Justinian* on the *Corpus Juris* is a good move, but that is for reasons essentially unrelated to the classroom. The path to greatness lies in thinking new thoughts for your peers, not in thinking new approaches to learning for your students. The latter is equally challenging as an intellectual matter, to be sure, and perhaps of greater value to legal *education*, but don't lose sight of *your* goal.

Now, Lash, I want to be fair. You cannot, perhaps, be accused of ignoring the rules of thumb entirely. After all, you have taught for many years at one of the gems of American legal education. But as a general matter, you cannot be absolved of a radical failure to live by the rules that govern our job. Take rule number one about publishing frequently. It is not that you have not published quite a lot over time—you have—but you plainly could have published so much more. Why on earth didn't you take your little book on Watergate (one of the best things ever written on the subject) and turn it into the five or six articles plus a hard-cover collection of them which its content deserved? And what about your work on the role of narrative—for some reason you preferred the word "story" much of the time? Really a bit *déclassé*, don't you think? The work itself, spanning the law of evidence, the law of the United States Constitution, and fundamental issues of jurisprudence, is superb. But you could have made so much more out of it than another small book and some articles. All you had to do was to prefer repetition and self-aggrandizement over originality and insight . . . and sadly you chose the latter.

Now about publishing well: Lash, your behavior has been quite unacceptable. You have put fascinating writing into books which belonged in law review articles. You have let fabulous work—your article about the relationship between constitutional law and constitutional history is the single most powerful essay I have ever read on that topic—appear wherever it landed, entirely ignoring your obligation to push your work ever upward on the law review pecking order. Good heavens, you even left a wonderful

reflection on the prospects for American constitutionalism in your school's alumni magazine. Whatever were you thinking?

Priorities? Anyone who has had the pleasure and privilege to interact with you personally about constitutional law (I speak of our shared subject) knows how much intellectual time and energy you have devoted to the task of rendering the area comprehensible and demanding for students. Your engagement with constitutional law as a scholar and teacher, for whom those two roles are one, shines in your writings. But that just shows your heretical stance toward our profession and its ideals. What kind of example have you set for the rest of us?

So this is my complaint, Lash. You have refused, repeatedly and with specific intent, to play the game according to the rules. You have preferred to think, teach, and write greatly, at the cost of embarrassment to those of your colleagues across the land not entirely armored against such embarrassment. You have made a difference, in that peculiar way in which only a great teacher and scholar can make a difference. That is quite unforgivable.

A few years ago, Wendell Berry wrote a poem in honor of Hayden Garruth. The two are, in my judgment, similar in that each is a great contemporary American poet. Furthermore, Berry, Garruth, and you resemble one another in that you all enjoy being contrary . . . and in your respective ways of being so, you gift us all. It is not altogether surprising, therefore, that Berry's words about Garruth could be, if only I had the art, mine about you:

. . . for joy

I read on without stopping, made eager

by your true mastery, wit, sorrow and joy[.]

I take off my hat to you . . .

in your great dignity of being necessary.<sup>10</sup>

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10. WENDELL BERRY, *To Hayden Garruth*, in ENTRIES 53 (1994).

David S. Caudill\*

*Professor LaRue and My Own Boot Camp*

For sixteen years—from the time I joined the Washington and Lee law faculty until Professor LaRue retired (and I left for Villanova)—I felt as though I was in some sort of apprenticeship under LaRue's guidance. Or perhaps it was more like a personal boot camp, with LaRue in the figure of a drill instructor. As we both had brief careers in the military, the analogy may be apt.

Professor LaRue was, at the time of my arrival in Lexington, Virginia, already a leading light on the law faculty—a productive scholar, an obvious polymath, and a wonderful person to be around. In any event, I gravitated toward LaRue early on at Washington and Lee; even during the hiring process, we discovered that we shared friends like Professors Scot Powe and Sanford Levinson of the University of Texas law faculty (who helped convince LaRue, who in turn helped convince his colleagues, that I should be hired). I soon discovered that we also shared some interdisciplinary interests, including law and literature, jurisprudence, ancient Greek, and the history of science. And in the years that followed, I enjoyed a collegial relationship with LaRue that culminated in the forthcoming publication of our book, *No Magic Wand: The Idealization of Science in Law*.<sup>11</sup>

In my earliest years at Washington and Lee, LaRue gave me sage advice. I remember attending a graduation ceremony on the main campus, and while walking back to the law school with LaRue, I said that the graduation speaker's thesis was not clear, and his arguments were not compelling. LaRue looked at me like I was from Mars, exclaiming, "What did you expect from a graduation speech? That was not about theses and arguments—it's about feeling good and satisfying parents, with well-worn platitudes." A few years later, I recall reading the news about a particularly controversial confirmation hearing involving a legal scholar who had been nominated for a cabinet position. In my discussions with LaRue about the controversy, I naively told him that the candidate was being treated unfairly, insofar as those opposing confirmation were oversimplifying the scholar's positions and not reading all of the scholarly record carefully. Once again, LaRue looked at me as if I was from another

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\* Arthur M. Goldberg Family Chair and Professor of Law, Villanova University School of Law.

11. DAVID S. CAUDILL & LEWIS H. LARUE, *NO MAGIC WAND: THE IDEALIZATION OF LAW IN SCIENCE* (2006).



planet, explaining that it was unlikely that the opponents of this nominee's confirmation were concerned about fairness or about careful and comprehensive interpretations of a scholarly record.

The longer I was on the faculty at Washington and Lee, the more I realized how much everyone respected LaRue's judgment about all matters academic. In faculty meetings, he was famous for his calm pronouncements that would settle a debate or issue—his position always seemed logical and necessary, even common-sensical. In most cases, LaRue's colleagues deferred to his judgment. And in my own scholarly writing, neither the completion of a manuscript nor its acceptance and publication by a journal gave me as much pleasure as the comment months later in the hallway by LaRue (to whom I had given a reprint): "You got it right."

Over the last six or seven years, LaRue and I have been working together as co-authors. We started with a short article about how *Daubert* was being applied,<sup>12</sup> later published an update of that article,<sup>13</sup> and then published two longer articles exploring the place of science in the courtroom.<sup>14</sup> For many scholars, the co-author experience is less than superb, but LaRue and I seem to have found the right balance and boundaries. LaRue is a harsh critic, but it never feels bad to be the object of his critique because of our mutual respect—I trust his judgment, and he trusts me to fix problems. When we realized we had enough original material for a book, we found a publisher, celebrated our contract, and set to work on our manuscript. The first draft, which I prepared, was bulky and unacceptable to LaRue, so he recommended deleting large sections, wrote some new materials, and changed the character of the book (for the better). When I finished my edit of his revisions, he approved the manuscript and said, "Chapter 5 is particularly well written; how did you do it?" Surprised by that compliment, I remarked that I had no idea why it was good, adding that "the chapter was 137 pages, and I cut it to thirty pages." At that point LaRue interrupted me to say: "That explains everything—you're finally writing as if you didn't have the endless attention of a reader." Another lesson learned.

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12. David S. Caudill & Lewis H. LaRue, *Post-Trilogy Science in the Courtroom: What Are The Judges Doing?*, 13 J. CIV. LITIG. 341 (2001).

13. David S. Caudill & Lewis H. LaRue, *Post-Trilogy Science in the Courtroom, Post II: What are the Judges Still Doing?*, 15 J. CIV. LITIG. 1 (2003).

14. Lewis H. LaRue & David S. Caudill, *A Non-Romantic View of Expert Testimony*, 35 SETON HALL L. REV. 1 (2004); David S. Caudill & Lewis H. LaRue, *Why Judges Applying the Daubert Trilogy Need to Understand the Social, Institutional, and Rhetorical—and not just the Methodological—Aspects of Science*, 45 B.C. L. REV. 1 (2003).

I enjoy LaRue's company, whether as a co-author who joins me in a quest for clear and significant scholarly writing, as a perennial commentator on contemporary politics (over coffee in the faculty lounge), or in social settings when LaRue can discuss films, show off his strikingly good photographic works, or mix exotic cocktails. More importantly, I realize that my career as a legal academic would, without LaRue, not have turned out as it did. I benefited from his tireless attention to my scholarship, and I continue to admire him as the model of a law faculty leader. I could go on, but as LaRue would say, a reader does not have an endless attention span.

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Megan Fairlie\*

It is a bittersweet experience to acknowledge Lash LaRue's recent retirement. As his friend, it is impossible not to be pleased for him. He will now be able to revel in the approach of both Christmas and summer, unshackled by the arduous task of grading law school exams; he will enjoy the freedom of setting his own schedule and may dedicate more time to passions other than the law, such as his love for photography. At the same time, however, it is difficult to think of Lewis Hall without Lash. Quite simply, the special quality of life at Washington and Lee comes from its population. The open doors, open minds, and open hearts found at Washington and Lee make the Law School a unique place indeed. It is its people that make the institution, and Lash, like a column in the University's famous façade, has played an integral role in creating its environment.

As a student, I first had the opportunity to learn from Lash—and observe his love for law—in Evidence class. I fondly remember his gleeful laughter as he stumped quite a few of us in that infamous quiz on hearsay, as well as the invaluable gift he gave to those of us who would, one day, become litigators: a slim, spiral bound book containing the Federal Rules of Evidence. My copy of the latter was carefully marked with Lash's insights—notes to remind my future self that the rules are not always as they *appear* to be.<sup>15</sup> The decision to arm all

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\* Washington and Lee University School of Law, J.D. 1996.

15. Sadly, this book remained a prized possession only until I shared it with a senior litigator to whom I sat second chair during my first year of practice—I remain convinced that he saw the value in obtaining custody of such a document—and that it walked off in his briefcase. Lash, true to form, kindly offered to replace the book—but in his natural humility, failed to recognize that the real loss was not of a portable copy of the Rules, but the notes I had made in

of us with such a book, I think, was consistent with Lash's teaching style, which included an enthusiasm for the theoretical side of law, but at the same time embodied a commitment to the practical and emphasized the importance of the interplay between the two. I similarly recall how he made the law "come alive" in *White Collar Crime* as we put RICO under the microscope and sifted through the pages of the hot topic of the time—the Rostenkowski indictment.

Through these reminiscences, however, the magical quality of Lash, and also of Washington and Lee, remains elusive to those unfamiliar with the two. To convey that Lash is committed to the study and appreciation of law, and that he succeeded in inspiring a passion and interest for it in his students, is only the first step towards distinguishing him. To portray a fuller picture of Lash, I feel compelled to share a more personal, quintessential Professor LaRue story (despite the fact that I may appear somewhat foolish in the process). There is simply no better way to convey those qualities that make Lash, and the school he represents, peerless.

About three years after graduation, I found myself a prosecutor on the eve of one of my first felony jury trials. Reviewing my file for the umpteenth time, I made a novel observation: a piece of evidence crucial to the case might not survive an objection from the defense. I could not see a way around the problem, if it arose, and neither could my fellow attorney friends. What to do? Who to ask, at eight p.m. on a weeknight, a mere thirteen hours before I planned to call the case for trial? Perhaps obviously, my mind turned to Lash. I had an evidentiary question and could not suppress the thought that the one person who could help me was the person who laid the groundwork regarding what I knew about evidence. I tried to dismiss the idea; after nearly three years, I could not possibly call him (certainly not at night *and* at home)—what if he did not even remember me? In the end, however, the desire to win my case won out; I resurrected my W&L phonebook (what other University supplies its students with the home phone numbers of their professors?) and made the call. And, of course, all was well: Lash was Lash—delightful, flattered by the communication, and eager to help. We conversed for over an hour and a friendship was born.

I have shared the story of this eleventh hour phone call numerous times over the years, generally to the shock of my listeners. Those who are the product of other law schools tend to be the most amazed, unable to even think of the possibility of reaching out to a former law professor in such a manner.<sup>16</sup>

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the margins that reflected his tutelage.

16. My classmates, however, tend only to be surprised by how bold I was in reaching out (as I did, when I did) and not by the response I received.

But there was something about my experience at Washington and Lee that made such a communication possible: the feeling that students (even previous ones) are—and never cease to be—*the* priority. The sentiment that teaching is a necessary evil in the life of one who wishes to research and write did not seem to exist within the confines of Lewis Hall and, I am confident, has never been even a fleeting thought for Lash. Throughout the course of our friendship I have heard Lash speak of the love he has for all of his students. Upon reflection, I have no doubt that the reason I was able to make that initial phone call was due to the fact that, as his student, I was aware of his feelings for all of us.

In the years that have passed since we resurrected our lines of communication, I have been blessed to be the ongoing recipient of Lash's support and benevolence. He has been particularly obliging in recent times, as my work has taken on an international focus. Eager to help and to share his commitment to the study of law, he has enhanced my legal writing, providing exposure to concepts heretofore unknown to me and in such a way as to assist me in drawing a bridge from the domestic to the international sphere.<sup>17</sup>

Perhaps, then, it is fitting to close with a comment which reflects my international experience. It was a lovely surprise when the invitation to be a part of this tribute reached me overseas. I immediately thought of how best to describe the emotion that accompanied the receipt of the request. Having lived on the island of Ireland for the past three years, my description came out in the vernacular: I was *chuffed*. I then tried to think of an American equivalent for this word and could not. Chuffed is a combination of so many emotions: moved, pleased, proud, honored, and touched, to name a few. I have come to the conclusion that this word is sorely missing from our vocabulary—we should have a word that expresses all of these things—so that our sentiments do not get bogged down in the description. I am chuffed to have been asked to contribute to this piece, chuffed to have been the ongoing recipient of Lash's benevolence, and chuffed to be able to claim him as a mentor and friend.

*Go raibh mile maith agat!*<sup>18</sup>

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17. It is impossible to relate how much Lash has assisted me in this vein. His avid and longstanding commitment to and interest in law makes him an incredibly knowledgeable individual—an invaluable resource to a novice such as I.

18. "Thank you very much!"

Mark Rush\*

I have had the privilege of serving beside Lash LaRue as his colleague in arms in the Election Law course we have co-taught several times. The opportunity to teach at the law school is both a challenge and a privilege. It was especially meaningful to me because, in my case, the chance to teach a law class was really a chance to learn at Lash's side. I have heard many colleagues describe co-teaching as more of a burden than teaching alone. Yet, "working" with Lash was really an *opportunity* to learn more about a subject in which I have a great interest while honing my own teaching skills. Lash was and remains a mentor to me.

Meeting with Lash each week to prepare our class was a wonderful chance to trade notes and refine our classroom strategy. Sometimes though, it was difficult to stay on our subject. There we would be, discussing some aspect of election law in his office when, despite myself, I would notice a new or different book hidden on his overflowing shelves. Problem was, it usually was not germane to our topic: A logic book here, calculus book there, and a translation of Thucydides, a Spanish legal compendium, Shakespeare, and an original Greek something or other on the next shelf. One day we started discussing election law and ended up debating baseball statistics and the sabermetric calculations of fantasy baseball. Darned if he didn't have the book—signed by the author, no less—that I was about to look for on the subject.

It is impossible to work with Lash without quickly appreciating the depth of his intellect and the curiosity and energy that animates it. Now that he's retired, I almost expect him to appear in the geographic information systems course I will be teaching next year!

Lash, thanks for the chance to work with you and learn from you. Your approach to teaching and learning embodies everything that makes the liberal arts wonderful. You are a wonderful colleague, mentor, inspiration, and friend. It has been my privilege. See you 'round.

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\* Robert G. Brown Professor of Politics and Law, and Director, Program in International Finance and Commerce, Washington and Lee University.

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# ESSAY

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