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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."¹ 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.² 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.³ 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

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.’”⁴ 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.

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.⁵ Over the years, it has become ever more chronological,

4. *Id.* at 153.

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