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A Gathering to Remember Jacob D. Hyman, Dean and Professor

Jacob D. Hyman, former Dean of the University at Buffalo Law School and long time faculty member, died at his home in Edgewater, Florida, on April 8, 2007. He was 97. Known to his friends as Jack, and to former students as Dean Hyman, he was born in Boston. He attended public schools in that city and in Brookline, before earning both his bachelor's degree in 1931 and his law degree in 1934, both from Harvard.

After graduation he went to work for Blumberg & Parker in New York City, a medium sized firm with a significant administrative practice before federal agencies. Fascinated with the energetic New Deal lawyers who worked for Federal government agencies whom he encountered in practice, in 1939 Hyman moved to Washington and joined the legal staff in the United States Department of Labor's Wage and Hour Division. Three years later he moved into the Office of Price Administration where he worked for John Kenneth Galbraith and eventually became Associate General Counsel in charge of litigation in the special court that reviewed price control orders.

In 1946, when price control had wound down after World War II ended, Hyman moved to Buffalo to teach at the Law School, then located downtown on Eagle Street. His teaching and scholarship centered in the areas of administrative law, constitutional law, jurisprudence, and state and local government law.

Hyman became Dean of the Law School in 1953. He held that post until 1964, when he returned to full-time teaching. He retired for the first time in 1981, but kept teaching part-time until 2000, when he again retired after fifty-four years at the Law School.

A fierce champion of the Law School, Hyman was especially proud of its history. No one who talked with him

at length could not know of the illustrious faculty who had taught there, including Frank Shea, later founder of the Washington law firm Shea & Gardner; David Riesman, the noted sociologist; Mark DeWolf Howe, the legal historian; Ernest Brown and Louis Jaffe. He was also very proud that the Law School's building was named after the prominent Buffalo and Washington lawyer, John Lord O'Brian, well known for his work in defense of civil liberties during the McCarthy years.

During all of his teaching career Hyman was active as a labor arbitrator, both in the public and private sectors. He also was engaged in many public service activities, serving variously as chair, board member, committee chair, or simple committee member of such organizations as the City of Buffalo's Charter Revision Commission, the Community Welfare Council of Buffalo and Erie County, the Citizens Council on Human Rights, the Children's Aid Society, and the Legal Aid Society of Buffalo and Erie County.

Devoted to what some saw as "his" Law School, Hyman also championed the University, working hard in support of its merger into the SUNY system in 1963 and later as the first Chair of the President's Review Board. Former University President and present Law School Faculty member, William R. Greiner, noted that, "It was Jack who recruited Carol and me to UB by convincing us that it was a good place to teach and that the region was a wonderful place to live. For 40 years that has been the case, in part because Jack continued to be a friend and mentor."

Prominent attorney, former student, and fellow faculty member, James L. Magavern, remembered that Hyman's teaching "was always connected to the fundamental political issues of the time" and that, "his intellect was in another world, but he never looked down on his students. For us he was a decent guy who was concerned about our education." Nils Olsen, former Dean of the Law School, observed that Hyman's "concern for what was going on at the school and his willingness to assist in any way that he might in the school's improvement, never failed. He was a great, good man." John Henry Schlegel, a younger colleague and friend, said, "Jack was an amazing scholar, a true intellectual. Until just a week or two before his death Jack continued to read and comment about articles, suggested topics for research and urged me to read important new books. None of us whom he mentored and so befriended will retire as he did—with all his marbles and some of ours."

Hyman was married to the late Marion (Posner) Hyman from 1933 until 1979. After their divorce, he married Clarice Lechner-Hyman in 1979 who survives him. He is also survived by two daughters, Susan Kraut, of Chicago, Illinois, and Joan of Buffalo; and a son, Jonathan, of Newark, New Jersey; six step-children, Pieter M. Lechner, of Sierra Madre, California, Kezia Lechtner of Philadelphia, Pennsylvania, Sarah Lechner of Minneapolis, Minnesota, Lucy Reichenstein of Honeoye Falls, New York, and Donnie and Paul Funch, of Groton, Massachusetts, as well as six grandchildren and seven step-grandchildren.

What follows are the presentations made at *A Gathering to Remember Jacob D. Hyman, Dean and Professor*, held at the Law School on October 13, 2007, a brief reminiscence by Professor Alfred S. Konefsky, and a bibliography of Dean Hyman's works.

The Dean

R. NILS OLSEN†

We are gathered here today to celebrate the memory and extraordinary career of an equally extraordinary man, Jacob D. Hyman. In his fifty-four years of faculty service at the University, Jack more than any other person personified the very best qualities that we value and seek to instill at the University at Buffalo Law School. He was a good and decent man with a lifelong commitment to apply his legal skills, first imparted at Harvard Law School, to achieve the betterment and advancement of society. This commitment informed his teaching and scholarship throughout his long career. He was passionately committed to the necessity of real diversity within the membership of the bar and devoted a good deal of his time and effort to achieving it within the student body at the Law School.

Jack was a pioneer in studying the historical, political, and social context in which law is made and practiced. He had a very real respect and affection for his students and was a dedicated teacher who always sought to prepare and meaningfully participate in the learning process with them. Jack was never content to teach the same subject repeatedly, even at the close of his career. If I recall correctly, the last course that he taught was a course in New York Administrative Law, a subject that many of his colleagues questioned the existence of. Jack managed somehow to put this class into a context and to teach it very well when he was over ninety years old.

Jack was dedicated to the Law School and participated willingly and with vigor in our efforts to establish an effective development plan and program. Indeed, in many ways the efforts of those of us who followed him were informed by his values, contributions, and aspirations for the school. Equally importantly, Jack was loved and respected by his former students in a manner that the rest of his colleagues could only aspire to. Indeed, to many of our graduates from the late 1940s through the early 1960s, he was always thought of as simply "The Dean." They never

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tired of hearing about his continuing presence and activities within the Law School.

I will close my remarks with a brief example of what to me highlights his unique standing among our alumni. For many years I taught in the clinical education program at the Law School, including a very contentious period of time in environmental policy. Jack's office was just down the hall from mine and I began to meet with him regularly to discuss the work of the clinic and to seek his input on its work product. One particular matter involved a proposal to site a large solid waste landfill in a rural area. Many of the local residents were opposed to the proposal and the clinic was representing them in state court.

During the course of the litigation, I was scheduled to present oral argument on an appeal in the Fourth Department Appellate Division in Rochester. Jack very kindly read drafts of the appellate brief that my students and I had prepared and made numerous suggestions for its improvement. As the date of oral argument approached, I thought it would be appropriate and enjoyable to invite Jack to accompany us to Rochester. He and I drove down to the Appellate Division on a beautiful spring afternoon, and I suggested that he join me at the Appellant's counsel table.

After we arrived, we sat down at the table and the court of five justices filed in. Two were UB graduates of many, many years preceding my involvement in the school. Both delayed the proceedings by about ten minutes to acknowledge the presence of Dean Hyman and to engage in a fairly lengthy dialog with him concerning his involvement in the Law School, the courses he was teaching, and how his family was doing. Unfortunately, when oral argument finally began, my arguments were not held in the same esteem by the court. It was a difficult argument; it was a long argument; and it was particularly contentious argument. Counsel for the Appellee certainly had very little good to say about our case. Thus, I was quite surprised, although I guess I shouldn't have been, when he asked at the end of oral argument, "Could you please introduce me to Dean Hyman?"

Jack really had the ability to transcend even the differences among counsel in difficult cases. He was truly a person who was dedicated to the Law School. For many years he kindly read, commented on, and showed an interest in the numerous documents that were prepared for the Provost and President with respect to the Law School

and its program. I don't think we will ever see Jack's kind again. His fifty-four years of committed and very effective service to the Law School, as well as his dedication to the institution and what it aspired to be, were both truly unique and extremely important to those of us who try to soldier on in his absence.

Thank You, Jack

HUGH B. SCOTT†

I'm a 1974 graduate of this school. In '71 I came here, proud to be a product of the late 60s. I wanted to change everything around me—civil rights, Vietnam, the system, anyone over thirty. Aside from carrying my hair through the door to come to class, I was really interested in questions of constitutional law and our freedoms as American citizens. After fighting in World War II, my father moved here from Memphis in the late 40s. He came to the Law School already with a family and no money. Between an argument with me about cutting my hair and my trying to figure out what my schedule was going to be, he said, "Who are your teachers? Who are you going to have?" When I got to Jacob Hyman's name, he stopped. He said, "He's still there isn't he?" I said, "Yeah." I said, "I haven't met him." My father then sat me down and told me that Jack Hyman was nearly the only person here at UB in the late 40s who would give him encouragement about who he was, about his capacity, his ability. My dad seemed to feel that he had let Professor Hyman down by leaving the school. My father said to me "make sure you get through that school" and I will make sure finances "won't be an issue for you." "You can't let Jacob Hyman down." That's 1971.

Jack Hyman really did show a genuine interest in civil rights and to me he really understood the struggles of the 60s and the Civil Rights Movement or whatever you might want to call that period of turmoil. I saw it as a period of people fighting for basic human rights and I had a professor who understood that. I also found that what he taught us was usable, that there was a connection between what we learned and what I might do to change conditions that fueled so much unrest in the 60s.

Jacob Hyman knew that a number of minority students who had been admitted to the school were bringing a lot of issues with them, not the least of which were issues of self confidence and self esteem. He also knew that when arriving at the Law School we also felt a sense of

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† Magistrate Judge, United States District Court for the Western District of New York.

intimidation. And so, Jack always would stop me, and I know a number of you in this room, and ask, "How is everything going?" And that wasn't just "How's it going?" He really wanted to know how things were going. And I was just tremendously moved when he showed that kind of interest. I will never forget it. And I like to think that Jacob Hyman is part of everyone here today.

Jack Hyman made us learn how to learn. Jack would implore us to follow the advice of scientist/philosopher Thomas Huxley, who urged all to: "Sit down before [a] fact as a little child, be prepared to give up every preconceived notion, follow humbly wherever and to whatever the abysses nature leads, or you shall learn nothing."[1] Jack Hyman taught us to seek objectivity and reasonableness and how to advocate with a respectful voice. If you took any time to observe Jack Hyman, the teacher, the lawyer, the mentor, the friend, you saw the person each of us as lawyers should strive to become—lawyers with the highest standards of professionalism, decency, compassion, wisdom, and above all civility. Thank you, Jack for everything you did for all of us.

1. 1 LEONARD HUXLEY, LIFE AND LETTERS OF THOMAS HENRY HUXLEY 235 (1900).

Jack Hyman's Law School Without Borders

THOMAS E. HEADRICK†

I am one of the many deans who followed after Jack Hyman and pursued the path that he had laid down for us. Jack Hyman was a dear friend of mine, an advisor and mentor, a loyal, indeed passionate supporter of the Law School and its leadership through the years. As Nils has indicated, to the alumni whom I had the good fortune of knowing and working with over the years, he was always "Dean Hyman." It is upon "Dean Hyman" that I wish to dwell for my few moments on this occasion.

Jack became Dean in 1953 following George Stevens' brief stint, which Al Mugel used to describe as the "train stop deanship," Stevens staying only long enough for the train to refuel and then be on his way. Because of the Second World War, and other factors, UB had had a series of short-term deanships. It was badly in need of the stability and continuity that Jack provided as he moved the school forward over the next eleven years. When Jack took the helm, the school faced very stormy times. The full-time faculty was small in number, poorly paid. The GI Bill boom had disappeared; enrollments were sinking, as well as applicant quality. And many students divided their study time with full-time jobs essential to support themselves and often their families.

Jack recounted all of this to UB Chancellor McConnell in his first annual report. What was striking about that report was not its recitation of problems; however, it was its expansive conception of what changes were needed in legal education and how UB should and could innovate and offer leadership. As mentioned in the program, Jack knew, respected, revered his faculty colleagues and predecessors—the likes of David Riesman, Mark DeWolfe Howe**,** Louis Jaffe, Ernest Brown, Philip Halpern—whose far reaching talents, interests, and teaching spread well beyond the bounds of traditional legal education. They set a tone for UB, created a culture of challenge to the established law school order. Jack took up those themes in his report. He

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questioned the usefulness of the case method as the exclusive law school pedagogical tool and its emphasis on common law tradition and doctrine. He saw and foresaw the vast burgeoning of legal topics built around new public policies and laws that were not adaptable to the old pedagogy. He emphasized the changing roles of lawyers as shapers of these policies and their legal implementation.

For Jack, no one exemplified this more than the famed UB law graduate, John Lord O'Brian. Jack argued that in order to develop lawyers who would follow the path of the John Lord O'Brian's of this world, legal education had to incorporate the understandings of the social sciences and other disciplines. He looked carefully at the actual work of lawyers and noted that close case analysis was only one skill among the many required for successful and ethical law practice, that lawyers help resolve social, economic, political problems, and conflicts through negotiation, persuasion, and careful drafting, as well as through adversarial processes, and that law schools had an obligation to merge their theoretical approaches with some practical orientation. To do this, the Law School had to grow, had to invent new courses, had to bring in the understandings of other disciplines.

Reality has a way of pinching the visions of a dean especially in a struggling, private, comprehensive and over-stretched university. But despite those constraints, Jack was able to recruit faculty who shared his vision, who brought at the time non-traditional subjects and teaching to the curriculum–Saul Touster, Tom Buergenthal, Herman Schwartz, Wade Newhouse, Lou DelCotto, Bob Fleming, Joe Laufer. The school added courses that blended the theoretical and the practical, foreshadowing the extensive clinical programs that have set this school apart from many others. To support these initiatives, he laid the foundation for alumni financial support by creating the Annual Fund for Legal Education. And he organized the Alumni Association to build a stronger connection between the school and its natural supporters. Most importantly, when the opportunity presented itself for UB to join the State University, he put his talents and acumen behind the move. Again, he saw more clearly than many did at the time what this would mean not only for UB, but for the whole community.

Most law schools have a culture, a set of shared desires and beliefs, though often difficult to describe or articulate,

that has shaped their development and place in legal education. The UB Law School today has courses, programs, clinics, and community involvement that could not have been imagined in Dean Hyman's time. Its faculty members have been and are engaged in scholarship that pushes the conception and boundaries of law well beyond its disciplinary turf and into the whole range of investigations that help us understand how people, groups, movements, even nations act and how legal and social structures shape, foster and impede those actions. This Law School stands alone, or perhaps with only a few others, as one that sees and studies and teaches law without borders. That is the best way I can capture in words UB Law's culture.

Going back to Dean Hyman's first annual report and to his vision for change, we see a clear expression of the culture that, as it was imbibed from his mentors and predecessors, developed by his own experience, and passed on to his many successors, is now inculcated in its choices of faculty and seizure of opportunities by-passed by other law schools. The school has integrated other academic territories in its social environment. It is dedicated to the exploration of the vast social tapestry into which law is inextricably woven. UB Law today is Dean Hyman's law school, much larger, more expansive, better financed, but still not sufficiently so (once a dean, always a dean) than the one he led in the 1950s and 1960s. It is the law school of his vision, with the culture of the unconventional, of the borderless understanding of law. His spirit inhabits its very essence. It sits at its very core.

The Jack Hyman I knew was of course much more than "The Dean." He was a gracious, gentle, humane, principled man, blessed with a subtle and acute intelligence, fully engaged in worlds both near and far, fun and challenging for his friends, helpful and instructive to all around him. I could go on, but there are others here today who will fill out that portrait.

Thank you for the opportunity to share my love and my admiration for my dear friend.

Hi-Man!

VIVIAN GARCIA†

Here are some facts—and a bit of hyperbole—that I shared with Jack Hyman the day I met him.

I had worked for the National Labor Relations Board for two summers during law school, Syracuse Law School. In the Regional Office for Puerto Rico and the Virgin Islands, I had had the utter joy of handing out fat back-paychecks that resulted from unfair labor practices and it was, frankly, the best high I'd ever experienced. Representing neither the employer nor the union seemed like heaven to me and my goal was to become an administrative law judge.

I told Jack that when I gave the commencement address for my graduating class—which I hastened to add was my privilege not as a result of my grade point average, but as a result of successfully taking on the Dean and some of his ideas about our Commencement—I was one of the ones who had her future "all sealed up."

That summer, President Ronald Reagan gave a speech and, along with a few hundred other federal employees, I was RIF'd before I started full-time work at the Board. I never heard what became of the class action suit that some of the other lawyers commenced and that I was ambivalent about joining. Perhaps within six months, they too had been reoffered their positions, but at this point in time I was looking for a job.

After more than an hour in Jack's office with me mostly talking, talking, talking, (kinda like I'm doing now) and Jack mostly smiling, smiling, knowingly smiling, (kinda like he always did), but also asking questions and subtly underscoring the pieces he thought supported my goal, I left with some hope that I had a shot at the Assistant Dean job. I was clueless. I do not remember knowing that he had been the Dean before The Dean, Thomas Headrick, with whom I soon had an interview. If I had, I might not have been so me.

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By the time the NLRB regional folks begged me to come back as they cursed one of our presidents, they didn't have a chance. By the time I had my opportunity to turn them down, I had already begun regularly seeing Jack in the halls of this building and—believing myself to be the only person whoever thought of doing so—I would greet him with a big smile and say, "Hi, Man!" Walking that tall walk of his, he would smile back every time. He never commented upon whether or not the appellation was novel. I think because he saw that I was so pleased with how funny I thought I was. I like to think that it actually did amuse him.

What I know is that when I walked into his office that day—thanks to a dear friend from law school—I had been writing letters, sending out resumes, and ultimately working for a temp secretary agency in town (without telling them about my law degree). Indeed, some of you might find it as amusing as Jack did, to hear that a pre-eminent law firm in town offered to send me to paralegal school! Yes, they were just astounded not only with the precision and speed of my typing, but at my apparent knack with the law and almost incredible proficiency with respect to detail. Jack laughed heartily at this piece of the story. I know you each remember it; his laugh was deep and rich. It was a million-dollar laugh.

It was Jack's natural way, I found over the years, to nurture, not only in his mentoring of me but also with how he dealt with and respected students. He continued to shape my love for being an educator when he asked me to co-teach a couple of legal reasoning classes to those special 1Ls. As I watched him in action in the classroom, I only gradually learned the full measure of the substantive breadth of what he was delivering. I learned something every time Jack spoke. I knew it then. These were students who had not met all traditional standards for law school admission, with the exception of the legacies of course. Unlike a sitting United States Supreme Court Justice, however, most of them thought that *the shot* was all they needed. Jack made sure that they—and I—always felt that way. I suspect we are legion.

Over the years, I built my family, I got to share them with Jack and with Clarice. It was a simple matter to understand why Clarice and he were together, and I fell in love with her too. I would send Jack long—and short—letters about this or that disappointment or achievement. Over the years, I loved and appreciated him more and more.

As I suspect many of you know, he always wrote back. Always. He appeared constantly amazed at my courage and accomplishments. I have all of his letters.

Our friend and former colleague, Susan Carpenter, was hoping to be here today, but ultimately could not. This week in an e-mail she wrote:

> Remembering Jack Hyman will be a very happy time, though missing his presence in the flesh will be sad. I know his Spirit will be there, and that you will feel it. It wasn't until after I graduated from UB Law School that I realized what incredible work Jack had done in his life. They should have a seminar on The Jurisprudence of Jacob Hyman, but I guess his humanity overshadowed it.

You're not kidding Susan.

"Hi, Man!"

How Would Jack Do It?

WILLIAM R. GREINER†

I met Jack Hyman about this time of year forty-two years ago. Carol and I had been living in Seattle, Washington and I was on the faculty at the University of Washington in the School of Management. But, I had taken a leave and I was at a law school in New Haven doing a year's study and working on a book. Along about late September in that year, members in the law faculty suggested that maybe I might want to consider going into law teaching, instead of teaching at the School of Management. And yes Ken, it was Boris Bitker who made that suggestion. I thought about it and I said all right. Then Professor Bitker said, "I really think you ought to talk to the State University of New York at Buffalo. Their former dean is coming to interview." Boris proceeded to tell me a bit about his take on the University at Buffalo which was very positive and especially the Law School. I remember specifically him saying, "They're a very smart law school." So I said "Yes."

At the appointed hour, I went in to meet this man, Jack Hyman, and I must say I had many feelings about that interview. I was charmed, but I was impressed. I was impressed by intelligence which was on display at a very high order and I was also impressed by the dignity of the individual. He combined great humanity with great wisdom. And when I left that interview I said, "Gee, I hope I get to see him again and I hope I hear further from the University at Buffalo," which I did. The next time I saw Jack was in New Orleans. This was at the AALS meat market, the convention where all the law school faculty hiring used to go on. At that time, Nelson Rockefeller was governor. All things were possible. The Law School didn't just send a small delegation to the annual meeting, it sent the whole faculty. And that's literally true. There were twenty some odd people in that room. Most prominent, however, was Jack Hyman. While I was at Yale, I edited a book, a casebook that had been started by Hal Berman. It had been

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published and I was proud of that, but I didn't know whether anybody would pick up on that because the book was a book for undergraduates. If I had known Jack better, I would have known that he had acquired the book. Not only had he acquired the book, he had read it, at least substantial parts of it. Thus, he proceeded to do the interrogation on behalf of his colleagues so that they could decide whether or not they should make me an offer.

I have to tell you I have never enjoyed a job interview more than that conversation with Jack Hyman. Once again he demonstrated his enormous intelligence, and his great humanity and his great dignity. As a result of that conversation, an offer was made, and Carol and I came here. But I can say honestly, and I have said this before, had it not been for Jack Hyman, the rest of our life as we know it would not have happened in the way in which it did. We owe Jack that debt on a very, very personal level. He was the one who more than anyone else brought us to this, which has become our, place.

When we did come here it was 1967. UB then, along with the rest of the American academy and the country, went through a very turbulent period. Our University in some ways was spared the worst of that period, but we had our days. And it was during those days that people like Jack Hyman made an enormous difference. Our faculty, which at the time was housed "downtown" and isolated from the rest of the University, wanted to participate and be helpful to our University, but it was somewhat difficult. Jack, who knew both the University and the community, was in particular helpful to us because there were so many of us who were relatively young and new faculty. How should we behave in this environment? What could we do for our University? Jack was an enormously important leader in this regard. He had a deep and abiding commitment to the University, in addition to the Law School. He helped us all. He was a great advisor. He was our guide during that difficult period.

Also during that time, Jack displayed, in addition to his incredible dignity and intelligence, his commitment to social justice. Hugh Scott has talked a little bit and Vivian Garcia as well about how Jack became the mentor to new students and new faculty and new staff who were being brought into the University, and in particular to the Law School. These were people who should have but had not been part of this University and Law School years before. As our community,

our University, our Law School, we set out to try and deal with some of those omissions and Jack was an extraordinary leader in that regard. However, he went beyond that. He tried to be, and I think was, an effective leader in the whole of the University with regard to how the University should play its role in correcting for our omissions.

I remember one event in particular. We here at this campus were engaged in preparation for an enormous public expenditure on behalf of the Western New York community. The State, which had acquired UB in 1962, was going to invest in all new facilities for the University on this, our North Campus, and the rehab of some of the older facilities on our historic South Campus. Millions and millions and millions of dollars were going to be spent on this project. Jack observed that, just as the University had omitted people from its attention in prior years, the beneficiaries, or at least some of the direct beneficiaries, of this enormous State expenditure would be employers and employees in the construction business. The construction business, like so many of the businesses in our country at that time, was not, as we now say it, integrated. Jack was the person in the University who stepped forward and said we should see to it that when the State makes this great expenditure on our behalf and on behalf of our region, we should pay attention to the interests of all citizens in Western New York. In an open letter, he called for the State not to commence the building process at UB until it had taken steps to see to it that the construction trades would be integrated. This letter resulted in closing down the construction process at the University for a year, while the Governor undertook to do right in this regard. Though our efforts could not change all that behavior and rewrite all that history, we as a community and a university began a process which is still on-going. But, it was a process that started with a call from Professor Hyman, former Dean Hyman, picked up by our then President, Martin Meyerson, and ultimately by our governor. That was the kind of leadership that Jack could and did display.

On a regular basis, Jack demonstrated personal qualities that I think are really extraordinary. He leaves us a legacy of that. More than anything else, I think of the dignity and the human compassion that Jack would display, even handedly and equally. He was always the formidable presence, the dignified Dean Hyman, but you knew, (and he

did have great laugh) you knew that underneath that somewhat austere demeanor there was this warm human being ready on a personal level to help if he could. He was a great help to me, Jim Magavern and Milt Kaplan when we were starting some experimental ventures. We taught a course called Environmental Law before that was a popular notion. Jack used to attend my classes and give me advice on my teaching and it was always good advice. He was a friend. He was a helper. And yes, he was a leader. But more than anything else, he was a teacher. I think that's how we should remember him. I know we will remember him in other ways, but remember him as a teacher. I do. Over my lifetime I've often said to myself, "How would Jack do it?" And if I ever came even close to how Jack did it, then I knew I was going to get it right.

Investor Extraordinaire

RICHARD F. GRIFFIN†

It's indeed a privilege to have been asked to speak today. I suspect the reason I was asked is that I can add more gray hair and experience than anyone else, even more than Bill Greiner, metaphorically, that is. But at any event, it was September 1954, fifty-three years ago, that I appeared at 77 West Eagle Street where Jack Hyman was the Dean.

On a personal note, this was three months before I was fortunate to marry Dr. Jane Griffin—many of her friends are here today—who delivered two of our lawyer children during our law school experience. She, of course, had to review and approve my script for today. As many know, I've come to borrow Rumpole's expression, "She who must be obeyed."

It was my thought that it would be good to have a theme that would capture the essence of Jack Hyman for my brief remarks. The theme that I settled on was, and is, Jack Hyman, "Investor extraordinaire." Not investor in the financial sense, but investor in another sense as defined in the dictionary: "To devote morally or psychologically as to a purpose; to commit to others." Jack Hyman invested big time in the law, its practice, civil and human rights, our Law School, its students, and our alumni.

Now, my courses from Jack were Constitutional Law and Municipal Corporations. The problems of home rule in New York, as well as many constitutional law concepts such as due process and equal protection, were hammered into us. Of course, at the time we wondered whether we would encounter such issues. Would they ever appear in our practice, as they seemed at the time to be somewhat esoteric? Little did I realize, that in a few years with Jack Hyman's help, I would be in federal court arguing freedom of religion, and a few years after that, again with Jack Hyman's help, I would be in the same court arguing equal protection in order to obtain an order desegregating the Buffalo Public School system.

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† Counsel, Kavinoky Cook, LLP.

Incidentally, a little aside on the Constitutional Law class. There was a platform in the classroom that Jack would lecture from. And the square footage of that platform wasn't too generous, so there was much apprehension in the class, because as you know, Jack was a tall person, erect. He was very engrossed in the concepts he was discussing, so people were quite concerned that he might just fall off. Now I would love to tell you that there were a couple of people who said, "Watch out Jack!" but I couldn't come up with any who acknowledged that such occurred.

Jack Hyman invested heavily in the students and in the alumni of our school. A few days ago I spoke to one of Jack's best students, Jim Magavern. Jim focused on Jack's extraordinary affection for students and alumni and his appreciation for all of us. How many here enjoyed Jack Hyman's presence at their reunion? Six years ago at our 45th he was there at the young age of ninety-two. How many events of the Law School alumni featured Jack Hyman? He was always there. He got the revitalization of the alumni started.

Jack Hyman invested in human and civil rights and lent his expertise to many causes. On page sixty-eight of the 100 year history of our Law school, there's a discussion about the case brought by William SaMarion on behalf of about fifty Black Muslim inmates in Attica prison because New York State wouldn't recognize their religious rights. It mentions that "[a]t that time, Malcolm X and the Black Muslim movement were unpopular. Hyman and Professor Wade J. Newhouse Jr. assisted attorney Richard F. Griffin '59—and later Professor Paul I. Birzon—in presenting SaMarion's grievance."[1] The case was ultimately successful, and these gentlemen were recognized as having rights to practice their religion in the Attica prison. As an aside, we had Malcolm X as our expert witness in the case. He was a most fascinating person. He even came to our house for dinner because Jane had given birth to one of our children and was unable to come down to the courtroom to meet him. He is, of course, the most famous expert witness that I've ever had the chance to put on the witness stand. Judge Henderson, a tough federal judge, whom many of you may remember, loved Malcolm X.

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1. ROBERT SCHAUS & JAMES ARNONE, UNIVERSITY AT BUFFALO LAW SCHOOL: 100 YEARS, 1887-1984, A HISTORY 68 (1992) (footnote omitted).

Then in the 70s, another leader of human and civil rights, whom some may remember, Norman Goldfarb, a non-lawyer, was the Chairman of the Citizen's Council on Human Rights, of which Jack was an active member. Norman assembled a group of lawyers to talk about bringing the school segregation case. Jack was there providing his expertise. He breathed *Brown vs. Board of Education* and its teaching into the lawyers who were recruited for the case.

Finally, Jack Hyman invested in good health. How do you live such a long and full life? Nearly ninety-eight years. In addition to his great intellectual health and constant exercise of the mind, he was physically fit. One day by coincidence, I was walking along the beach over in Canada, I looked out and who emerged from the lake but Jack Hyman, probably ninety then. I said Jack, "I didn't know you were such a famous swimmer." We had a great chat.

So in conclusion, we celebrate the life of an extraordinary investor. He dedicated and committed his life to others and to great causes. This life is a model for us all.

One Less Note to Answer

JOHN HENRY SCHLEGEL†

Back in the 60s, back just after we and the West gave up writing on tanned hides, Burt Bacharach penned a *One Less Bell to Answer* song with lyrics that began like this:

One less bell to answer,

One less egg to fry,

One less man to pick up after,

I should be happy, but all I do is cry.[1]

The metrics makes sense only with the music, but the thoughts speak of all kinds of love, except for perhaps agapé, and so to the disappearance of Jack Hyman from my life.

Ours was a love affair of the head, not of the heart, not an affair born of passion, but a growing affection that, while it never traveled through wild passion—Jack was not given to excess—over time grew into love. For all its thirty plus years duration, I never understood what Jack saw in me, but, I suppose that's true of all love affairs, requiring, as they do, a certain lack of ego and respect for the beloved for them to work. We never advertised our growing affection; there was no point in doing so as it was begun when Jack had already started to disengage from active involvement in the political life of the Law School. We never hid it either. So, let me put it to you directly. Jack was one of my wrestling partners, someone with whom I could wrestle about ideas.

Now this last statement is surely odd for Jack was a swimmer—as Richard Griffin makes clear—in fact, and in personality, someone who measures performance according to some internal standard where won or lost, or even how you played the game, was not the object of the activity. The object was doing something as well as one could. Jack always pushed me to think as well as I could, and in that

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1. FIFTH DIMENSION, *One Less Bell to Answer*, *on* PORTRAIT (Bell Records 1970).

way he tried to be, not just a wrestling partner, but a teacher too, as he, like most good teachers, could never stop teaching.

Jack cared about faculty as a good teacher would care about his students. My favorite story of his level of concern for we, the new kids at the Law School, who are now no longer new, is about my dear friend Jan Lindgren. In the late 70s, some brewer began selling beer in six ounce bottles. Jan likes a bit of alcohol with her occasional Spartan-French meals, and so she would bring one of these little bottles to the lunch that she ate with her office door open. That office was a few doors down from Jack's and on that fact the story turns.

One day, when I was coming to see Jan, Jack called out to me to come into his office. He then told me to close the door, which, like Janet's and mine, was always open when in the building. This was going to be a serious discussion. What had I done! Jack wasted no time. "Your friend Janet is having a beer with her lunch. Does she have a drinking problem?" I assured him that Janet had no such problem. He said, "Are you sure?" I assured him again that there was no such problem and left. A while later I told Janet the story, and we have laughed about it many a time since, but then, and up till this day, I have never repeated what Jack said to me next. "You will pay attention to this matter for me." It was the only order Jack gave me. Even when already partly disengaged, he saw more and cared more about his colleagues than he let slip out.

It is odd for any teacher, even a caring teacher such as Jack, to find the most fun is to engage with essentially non-competitive minds. Teaching is a very competitive game where won and lost is constantly toted up. I remember Allan Freeman regularly saying that he badgered his property students with, "You will learn your future interests!" And even Jack once remarked of a public official involved in local law enforcement, "Well that's someone whom I never succeeded in teaching any constitutional law to." But Jack's clean preference for intellectual companionship was for a kind of wrestling that requires company, but no opponent, or at least an incorporeal one. One might think appropriately of Jacob wrestling with the Angel. I am no angel, but I have long shared that preference, starting with my father and including two bosses and several friends. Perhaps it is the similarity of

attitude toward intellectual life that he saw in me so many years ago.

Jack always wanted to wrestle over procedural answers to questions of government. His policy preferences were at times quite fierce—preservation of the New Deal regulatory edifice was one and the 60s civil rights hopes (edifice they never became, a failure that brought out Jack's most combative instincts) was another. But with me, he was content to discuss his hope to discover a set of processes that would guarantee good outcomes. I, an eternal skeptic that such is possible, managed to shed my general hostility to process theories, an hostility that otherwise would have brought out scorn and vitriol, and would instead play along.

I used the word "play" quite carefully here. It is fun to play seriously with ideas. Jack loved to play with ideas. He played quite seriously. The fate of the Union might not had been at issue in our wrestling, but the good of the Commonwealth was. The playing was fun for him, as it was for me. The point was always improving each other's thought, improving ones wrist control, mastering the half nelson, even trying a double leg take down. Ours was an activity that each could engage in separately, but that somehow worked better together.

On my side I supplied whatever manuscript I was working on. Jack supplied short and long notes. By the time I knew him, he had lost the compulsion to write that is my personal drug addiction, though not before completion of his last major effort, a review of Gerald Gunther's Constitutional Law casebook. The piece was as quick a takedown at the end of a long match as any wrestler could wish for when Jack observed that the book, and inferentially most of the scholarship in the area, had refined the doctrine to the point that it was largely useless to the litigating lawyer.

Sometimes Jack responded to what I had written; sometimes to something he read. Each assumed the other would reply. Jack always did. He was clearly disappointed when family or school life interfered so that I could not. It was, however, not an easy relationship for Jack. He understood my interests in American Legal Realism better than my involvement in Critical Legal Studies, and the drift in my teaching from Civil Procedure (where I came to replace him in the classroom) through Contorts and Corporations to Corporate Finance was difficult for him to

follow until I began to work on the history of the American economy, and especially on Buffalo.

It was obvious to me, in these our more recent discussions, that New York City never took when Jack lived there and Boston and Washington had faded away. He was in the end, a Buffalo boy who remembered the vibrant place he came to when he started teaching at the Law School in the immediate postwar years. He was as bewildered as the rest of the locals when it came to understanding why the place had come apart. Unlike most of them, the understanding of these events that my historical/historian's distance provided was, or at least seemed to be, helpful to Jack, though he only became enthusiastic of my pursuits in this area when I teamed up with Bill Greiner to pay attention to the economic redevelopment of the area that both Jack and I called Buffalo, though I always suspected with different geographic boundaries.

Our love affair was hampered by differences in our respective approaches to law as well as by age, though never station. Jack was at heart a litigating lawyer. In Jan Lindgren's words, he wrote for change. Though I did some litigation in practice, at heart I'm a transactional lawyer. I write for understanding. The New Deal litigating lawyer in Jack was not wholly comfortable with the bureaucratic universe he helped to bring about and then found himself mired in. He wanted to be sure that the bureaucrats got it right. Thirty years younger, and so more comfortable in the bureaucratic universe of my childhood, I only wanted to understand how the bureaucracy works so as to get done what I need to get done.[2] Still, we never allowed these differences in our approach to law to get in our way, to interrupt our fun.

And so now I have one less note to answer, one less argument to meet. One less person to give me the name of a book I just have to read. The last one, a biography of John Kenneth Galbraith, taught me more about the history of the economic thought in America than I had picked up for

2. Only once did Jack pull rank on me and then it was about my treatment of a student. He never believed, as I still do, that using a 2 x 4 to the forehead is an effective way of getting a student's attention. In addition, I still believe that it was an illegal move when, initially interviewing me, he followed my order of scotch with his order of soda. That was not the level playing field allegedly beloved by process scholars.

twenty years of my desultory reading on the topic. Jack never gave me a bum steer on a book. And yet, though I have always said that I wished for subtractions from the chaos of my life, like the lady in the song, all I can do is cry.

Writers need readers it is said. I'm not sure that such is the case, but I do know that thinkers need wrestling partners. This is not a need that decreases with age, unless perhaps solecism or brand maintenance reduces thinking to a set of obsessive-compulsive behaviors. But finding a durable wrestling partner is not easy. It takes time to learn the other's moves and then to figure out how to help make those moves better. As we age, there is less time; perhaps we learn more slowly; figure out responses more slowly too. And so, over time each of one's existing partners becomes an increasingly important to the world of ideas. The loss of anyone narrows the circle of life of the active mind.

Jack is gone. My circle is narrowed. I miss my wrestling partner. My life is more empty for his absence, because for all of these years his presence made my life, my thoughts better, richer, and more careful . . . about all one can ask of a colleague, teacher, and friend.

Jack Hyman, Student

ALFRED S. KONEFSKY†

Seven or eight years ago, when Jack was around ninety, he came into my office one Friday morning, announced that he was taking Al Mugel's Future Interests course (which, I think, met on Friday and Saturday at 8 a.m.), and wanted to know if I could recommend anything for him to read about the historical origins or roots of the Rule Against Perpetuities. Apparently Jack felt it was about time for him to master or make his peace with the Rule (better late than never, or that he could not shuffle off this mortal coil without at least trying). But, in characteristic Jack style, he thought the rule was easy enough to figure out, but he was much more interested in understanding why it came to exist, its social context, rather than its actual wording and meaning, or application. I told him about a very good article on the relationship between the origins of the rule and the English gentry. He said he would go get it. I said no, that was okay, I would find it for him in the library, and photocopy it for him. And I did. And first thing Monday morning, into my office walked Jack, ready to discuss the article. I tell this story to provide some insight into Jack's devotion in this law school to the life of the mind—ever seeking, ever learning, always a teacher, but as importantly, always a student.

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BIBLIOGRAPHY

Articles

Judicial Review of Price Control: The Battle of the Meat Regulations, 42 ILL. L. REV. 584 (1947) (with Nathaniel L. Nathanson).

Jurisdictional Disputes, 1 PROC. N.Y.U. CONF. ON LAB. 423 (1948) (with Louis L. Jaffe).

Constitutional Aspects of the Covenant, 14 LAW & CONTEMP. PROBS. 451 (1949).

Segregation and the Fourteenth Amendment, 4 VAND. L. REV. 555 (1951).

Judicial Standards for the Protection of Basic Freedoms, 1 BUFF. L. REV. 221 (1952).

Scope of City Home Rule in New York: Revising Ward Boundaries for Election of Supervisors Serving on County Board, 9 BUFF. L. REV. 1 (1959) (with Emil L. Cohen).

Desegregation of the Schools: The Present Legal Situation, 14 BUFF. L. REV. 208 (1964) (with Wade J. Newhouse, Jr.).

Standards for Preferred Freedoms: Beyond the First, 60 NW. U. L. REV. 1 (1965) (with Wade J. Newhouse, Jr.).

Home Rule in New York 1941-1965 Retrospect and Prospect, 15 BUFF. L. REV. 335 (1965).

Local Government, 19 SYRACUSE L. REV. 325 (1967).

Preface to the Articles on the Interrelationship of Social Welfare and Law Disciplines, 17 BUFF. L. REV. 717 (1968).

A Response to Perry: Judicial Method and the Concept of Reasoning, 19 BUFF. L. REV. 247 (1970).

Blacks and Whites, December 8, 1960, Papers Presented Before the Thursday Club (1974) (on file with the Buffalo Law Review).

Book Reviews

1 J. LEGAL EDUC. 311 (1948) (reviewing KENNETH REDDEN, INTRODUCTORY SURVEY OF THE PLACE OF LAW IN OUR CIVILIZATION (1946)).

11 PHIL. & PHENOMENOLOGICAL RES. 113 (1950) (reviewing MAX RUMËLIN ET AL., THE JURISPRUDENCE OF INTERESTS (1948)).

46 ILL. L. REV. 344 (1951) (reviewing ALEXANDER H. PEKLIS, LAW AND SOCIAL ACTION (1950).

3 J. LEGAL EDUC. 631 (1951) (reviewing FRANK R. STRONG, AMERICAN CONSTITUTIONAL LAW (1950)).

1 BUFF. L. REV. 208 (1952) (reviewing OWEN J. ROBERTS, THE COURT AND THE CONSTITUTION (1951)).

66 HARV. L. REV. 1346 (1953) (reviewing THOMAS I. EMERSON & DAVID HABER, POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES (1952)).

53 COLUM. L. REV. 1175 (1953) (reviewing J. LOUISE DESPERT, CHILDREN OF DIVORCE (1953)).

10 SW. L.J. 94 (1956) (reviewing JOHN LORD O'BRIAN, NATIONAL SECURITY AND INDIVIDUAL FREEDOM (1955)).

10 J. LEGAL EDUC. 274 (1958) (reviewing JAMES WILLARD HURST, LAW AND THE CONDITIONS OF FREEDOM IN THE NINETEENTH CENTURY UNITED STATES (1956)).

More Light on Youth in the Courts, 12 BUFF. L. REV. 536 (1963) (reviewing New York Joint Legislative Committee on Court Reorganization, *Young Offenders and Court Reorganization* (1963)).

Concerning the Responsibility and Craftsmanship of the Judge: A Review of Julius Stone's Legal System and Lawyers' Reasoning, *in the Light of Recent Criticism of the Supreme Court*, 14 BUFF. L. REV. 347 (1964).

Constitutional Jurisprudence and the Teaching of Constitutional Law, 28 STAN. L. REV. 1271 (1976) (reviewing GERALD GUNTHER, CASES AND MATERIALS ON CONSTITUTIONAL LAW (9th ed. 1975)).

Tributes

In Memoriam, *Carlos C. Alden*, 5 BUFF. L. REV. 256 (1956).

In Memoriam, *Justice Philip Halpern*, 13 BUFF. L. REV. 303-04 (1964).

Tribute, *A Tribute to Robert B. Fleming*, 3 PACE L. REV. 5 (1982).