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John Levy: Civil Libertarian, Ethics-Guru, Teacher, Mentor, and Man

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TRIBUTES

**JOHN LEVY: CIVIL LIBERTARIAN, ETHICS-GURU, TEACHER,
MENTOR, AND MAN**

JAYNE W. BARNARD

John M. Levy has worn many hats at William and Mary since he arrived in Williamsburg in 1976. Most recently, he has been indispensable to the development of our famous Legal Skills Program, the leader of our Externship and Clinical Education Programs, the Director of both our “outgoing” and “incoming” international programs, and a highly-valued ambassador to the judges and practicing lawyers of Virginia. He has also been the conscience of the faculty on many occasions when we undertook to do something heartless. He has consistently brought his goodwill and good judgment to many serious, sometimes heartbreaking, situations.

John has made his deepest mark, however, in three very specific areas. The first is in his lifelong commitment to individual liberties and equality as a leader of the ACLU; the second is in his enduring and thoughtful attention to issues of ethics and decency in the practice of law; and the third is in his support and encouragement for those few law school graduates willing to take up the task of representing the poor and otherwise underserved clients that few others want to represent. In all three areas—civil liberties, devising working principles for a legal profession that go beyond bar association platitudes, and access to justice—John has been a true star.

THE ACLU OF VIRGINIA

The ACLU was founded in 1920, in the aftermath of World War I. Its founders had been conscientious objectors during the war, and were now concerned primarily about the growing oppression of workers and immigrants in the post-war world, and about state-sanctioned violence against American Negroes in the South. Though American women had recently received the right to vote, there was really no such thing as women's equality. Equality for gays and lesbians—and even the importance and range of the First Amendment—were not on the ACLU's agenda at the time.

Today, the ACLU has nearly 300,000 members across the country—5000 of them in Virginia. John Levy joined the ACLU as a law student in 1966 and became involved in the Virginia affiliate in 1969. In the late 1980s, he served as President of the Virginia affiliate and served on the national ACLU Board.

Most importantly, since 1990 John has been chair of the Virginia ACLU Legal Panel, which vets citizen complaints for their litigation value. This panel considers hundreds of complaints every year—from prison inmates, high school students, public school teachers, political candidates, community organizations, sidewalk preachers, marijuana promoters, and Ku Klux Klansmen, to mothers whose children have been removed from their home because of the family's religious practices, do-it-yourselfers who want to broadcast a local radio show from their basement in violation of some FCC frequency guideline, and various cranks and zealots. When considering these complaints, the Legal Panel has to sort out the substantive legal issues, the jurisdiction and standing issues, the resource issues (i.e. who will actually handle the case—what volunteers can be found who are willing to litigate a week-long trial in Abingdon?), the public education value of some cases over others, the need in cases for nonlitigation strategy, and the consistency of principle that the ACLU tries, but sometimes fails, to impose. For more than a decade, John Levy has been a meticulous, demanding leader of this challenging, fascinating process.

When I asked John recently to name the four most important cases taken on by the ACLU during his leadership of the Legal

Panel, he of course equivocated. But finally, he identified the types of cases that have made this work so rewarding to him. This is what he wrote:

Voting Rights—In the 80s and early 90s, the ACLU made a real difference in the ability of African-Americans in Virginia to participate in the political process. We brought many, many suits challenging redistricting, single member districts and other ways that the State had kept its institutions as white as possible.

Religion (Establishment and Free Exercise)—We took endless numbers of Establishment cases, from creches on public property to prayer in schools. “There’s nothing wrong with prayer in school,” said Board of Commissioners Chairman Robert V. “Bobby” Owens, Jr. “The worst thing that ever happened to this nation is the American Civil Liberties Union—all those lawyers who fight for others’ freedoms. Too much freedom is what got this country to the place it is in the first place,” Owens said. “The people who took nativity displays off courthouse lawns, to me, they are the devil worshipers.”¹ The freedom of religion cases ranged from the rights of prisoners to have Native American rituals without having to prove they are Native American, to the rights of Wiccan priestesses to be certified to perform marriages without posting a bond.

Speech—These can be some of the most fun. A guy busted for wearing a t-shirt from some rock band whose slogan was “Louder Than Fuck.” A plane denied take-off rights to fly over the Virginia Tech graduation with a “peace now” banner. A whole series of ‘vanity’ license plate cases from ATHEIST (which DMV pulled) to finding through an FOIA request that the most denied plate in Virginia is some form of APE SHIT! The more traditional demonstration cases, e.g., the Norfolk anti-leafleting ordinance; excessive insurance requirements for peaceful demonstrations; content restrictions on the Capital grounds, etc.; the right to tell the public that you’ve filed a complaint against a judge.

Inmates—Everything from lack of medical care (a maggot-infested leg at MCV which had to be amputated); inmate access to lawyers; brutality; religion.

1. Lane DeGregory, VIRGINIAN PILOT, Sept. 7, 1994 at B1.

Miscellaneous—Character and Fitness questions about mental health counseling were removed from the Virginia Bar application. Gay and lesbian rights. The aftermath of *Buck v. Bell* (Virginia's sterilizing people in mental institutions, often without their knowledge).

Finally, a case involving a few W&M Law folks. *Taxi Zum Klo* (*Taxi to the Toilet*), an award-winning German film about homosexual life in some German city, was shown at the NARO Theater in Norfolk and busted for obscenity. The ACLU got a call a few weeks later from the distributor in New York that Norfolk was not going to return the film. The City Attorney said the film was going to be burned because it was "contraband!" We filed a federal suit in which Professor Fred Schauer (then of William & Mary and now of Harvard) wrote a memo on some motion or other, just sitting at his typewriter, cites and all. Professor John Pagan (then of William & Mary and now Dean at the University of Richmond) argued the case successfully in the Fourth Circuit.² On remand a deal was worked out that the film was to be put on a bus to New York with the agreement that it would never sully Norfolk's environs again. Some months later, the Barnes & Noble catalog had the video of *Taxi Zum Klo* for \$39.95. I didn't invest, but I did send a copy of the ad to the judge and the city attorney!

Kent Willis is the Executive Director of the Virginia ACLU. An avid reader of classical history, he offers a description of John Levy's impact on the organization over the last 20 years:

I remember reading once that trying to understand the full influence of classical Greece on the western world today would be like asking a fish to describe water. In the same way, it is overwhelming to try to describe John's influence on the ACLU of Virginia simply because it has been so pervasive for so long. The ACLU of Virginia, you might say, swims in the water of John Levy.

2. *Promovision Int'l Films, Ltd. v. Trapani*, 744 F.2d 1063 (4th Cir. 1984).

THE VIRGINIA STATE BAR

The Virginia State Bar is the mandatory bar regulatory apparatus in Virginia. It oversees lawyer discipline, works with the Supreme Court of Virginia in developing and implementing rules, and administers a number of programs. It also has a number of standing committees, including the Standing Committee on Legal Ethics, the Standing Committee on Lawyer Advertising and Solicitation, and the Standing Committee on the Unauthorized Practice of Law. John Levy's fingerprints are all over these groups and their publications. Most importantly, from 1993 to 1999, John served on the blue ribbon committee that re-wrote Virginia's Code of Professional Responsibility. So his fingerprints are also all over the Virginia Rules of Professional Conduct, which became effective in January, 2000.

According to Tom Edmonds, Executive Director and Chief Operating Officer of the Virginia State Bar,

The thing I remember best about John's role early in the committee's work was his strong view that it was folly to simply tune up the old CPR with a number of patches. Rather, he persuasively argued from the beginning that the approach taken by the Model Rules with its clearer, more succinct statements of ethical principle, followed by explanatory commentary after each rule was much superior to the code's more general statements of principle accompanied by unenforceable aspirational guidelines. Of course, he also made the point regularly that the Model Rules are now what is being taught in virtually all of the nation's law schools, including those in Virginia, as well as being used by the MPRE for testing competence in legal ethics in most states. Despite some feeling to the contrary among members of the committee, it did not take the group long to accede to John's opinion on this threshold issue. This set the committee on a course that involved far more work and effort over a much longer term than any of the members had assumed would be involved in simply studying the code and deciding whether it should be updated, but virtually all of them, including John, stayed the course and completed their work on a completely new set of legal ethics rules for Virginia lawyers.

Sharon Pandak, County Attorney of Prince William County, was a member of the committee. She recalls a number of John's efforts—not all of which were successful:

John being a moral conscience of the group in urging that there was a larger community to be addressed than just [lawyers];

John promoting the concept that the Code of Professional Responsibility should contain a rule requiring lawyers to follow in their personal and office practice the laws against discrimination ... and face sanctions if they [were] found to have not. A number of us supported this effort but, ultimately, the consensus was that this would cause the entire effort to revise the Code in any meaningful way to fail and this proposal was put off for "another day;"

John urging "open government" with respect to a proposed rule permitting what access an outside party could have to a government client or its members without the permission of its attorney.

Magistrate Judge Dennis W. Dohnal was also a member of the committee. He comments that:

John is one of those rare legal academicians who has a firm handle on the reality of real life in the trenches of the common practitioner. That being said, John is committed and, yes, passionate about certain issues—especially the pro bono responsibilities of our profession. It is certainly because of John that the section in the Rules on the pro bono obligations of the profession are included as an aspirational benchmark for what is the best in the profession—as is John Levy.

HIS STUDENTS AND COLLEAGUES IN LEGAL AID

John Levy came to William and Mary in 1976 to launch a clinical education program. The law school world at the time was awash in ideas for bringing what would come to be called "experiential learning" to students. The link to the federal Legal Services Corporation, initiated in 1974 to provide affordable civil legal services to poor people, was obvious. John Levy—with his experience in Legal Aid offices in Roanoke and Richmond, his experience

as an advocate before the Supreme Court of the United States,³ and his passion for justice, especially for the poor—was an obvious choice to be the first leader of this project.

Since then, John estimates that he has taken close to 500 William and Mary students through at least one “live client” experience at the William and Mary Legal Aid Clinic. The issues have included landlord-tenant disputes, routine contract disputes, repossessions, divorces, child custody battles and administrative law issues (e.g., Social Security, Unemployment Compensation, and welfare entitlements). According to John, there weren’t any big “law reform” cases to speak of, but “the issues and cases were very important to the clients.”

Rebecca Eichler, class of 1995, was one of John’s students in the Legal Aid Clinic. Now working for Hogar Hispano, a project of Catholic Charities serving immigrants in Northern Virginia, Rebecca recalls two things she learned from John: (1) he encouraged her to fiddle with one of his hand-carved “feely fish” when interviewing a client, rather than taking notes and losing eye contact—she still employs this technique today; and (2) he reminded her of the importance of the work she was doing in the Clinic:

He showed me that the respect a client deserves did not depend on the amount of fees they were paying for your services. Likewise, he taught us that being a good lawyer and a success in the field had nothing to do with your hourly fee or the amount of money that you make.

Linda Harris, class of 1995, was also a student in the Legal Aid Clinic. She now works as a Staff Attorney for the Department for Rights of Virginians With Disabilities. Among the lessons she learned from John was to act boldly, seek no credit, and to tend to what needs to be tended to:

In my third year I was fortunate enough to be chosen by lottery to participate in the Legal Aid Clinic. Not only would I have the opportunity to have hands on experience, but also it would be under the guidance of Professor Levy. I was

3. See *Dillard v. Industrial Comm'n of Va.*, 416 U.S. 783 (1974).

completely unaware what this selection meant in terms of the facility where I was to offer my first stumbling efforts to assist real clients with real problems.

What I learned later was that the Williamsburg Office of Legal Aid, although accessible to the general population, was not accessible in the work area. The attorney's offices were located upstairs, where the restroom was also located. The reason I had no idea of these problems of accessibility was simple. John Levy set about to quietly rectify the situation before the semester started. When I arrived, all of the renovations had been completed and it was completely accessible to accommodate my mobility impairment. Not that John ever told me of his efforts. In fact I would have never known if a staff person at Legal Aid had not asked me how I liked the renovations.

Kathy Hessler, class of 1987, was also a student in the Legal Aid Clinic. After graduation, she joined Legal Services of North Virginia and is now teaching in the clinical program at Case-Western Reserve Law School in Cleveland, Ohio. John encouraged her and helped her set goals at every stage of her career as a lawyer:

He helped me obtain a waiver from the law school's rules which allowed me to begin my Legal Aid Clinical experience in the summer after my first year. He also signed off on each successive independent study credit request so I could continue in the clinic for almost two years (even though I wasn't very good at it in the beginning). He was the first person in a legal setting to answer one of my questions with "Well, what do you think?" and he was able (eventually) to convince me that the answer mattered; that I might actually have something to contribute; and that my instincts about helping people could be achieved through, or in spite of, rules and process.

Big lessons from little cases. He was the first person to talk with me seriously about the individual impact of racism in the justice system, and to help me learn to take seriously my responsibility for not perpetuating it. He did this simply by asking me to consider why an elderly, illiterate, black, male client might have difficulty trusting me.

And then there were his stories. I learned so much about John, and the world, as we drove to Gloucester in his little car on our way to the Legal Aid office there. It was jarring to my

stereotypes of law professors to get into such a beat up car, see all the fossilized teeth, and talk about the local nuclear reactor, or how John wasn't even allowed to be a member of the bar early on because he was a Legal Aid lawyer.

I was the only person in my class interested in a public interest legal career. Without John's living example and his support, I might not have made it. It was inspiring to see that one could have open disagreement with a system, and yet remain there, dedicated to making it better.

If imitation is the sincerest form of flattery, I can tell John that despite my distaste for the competitive atmosphere and individualistic design of law school, I have come to teaching, largely so that I can try to be for other students what John was for me in law school.

JOHN AS A PERSON

Anyone who has dealt with John knows that he is a gentle person, a caring person, and a visually creative person (his cedar carvings and "feely fish" have brightened many of our homes and offices). He also has an interesting relationship with nature. Certainly he has been an ethical vegetarian for many years, but his relationship with nature extends to the land and the water. He loves exploring for fossilized sharks' teeth along the James River, for example, and has built an energy-efficient jewel of a house in Gloucester County.

Criminal defense lawyer David Baugh recalls visiting that house recently:

Within minutes you could tell that this was a man who was going through life and the world dedicated to making it better than when he entered. His efforts to preserve the property on which he lived, his logic of being a part of the environment instead of an exploiter or user of the environment, was so evident. There was a balance which seemed so natural.

I concluded that John Levy wants to make the physical world natural. He lives to let it be itself. His appreciation of our profession is the same. He wants to permit that which is innate and good in humans, the love of the spiritual, the respect for life, the appreciation for others, to flourish.

Tom Spahn of McGuire Woods in Tysons Corner adds another dimension to this picture of John as a person who appreciates people—even those with very different values:

John's viewpoints could not be any more different from mine—John is an unabashed liberal and I am a Reagan Republican. However, while serving on the state bar committee to redraft the ethics code, I quickly became an admirer of John's style. All of us at the Bar are told that we can "disagree without being disagreeable," but I have never seen a better living exemplar of that aspiration than John. He was unapologetically passionate about his viewpoint, but was also inevitably pleasant, courteous, and civil.

During breaks in our meetings, John and I grew quite close, despite our ideological differences. As many in our profession struggle to find some balance in our lives, John has obviously found the right way to live. He was as passionate and intellectually curious about his foreign travels and various other projects as he was about the Rules. Even now, I am learning about other interests in John's life—all of which he pursues with vigor, but about which he displays an unjustified modesty. I continue to be amazed by his constant enthusiasm for the law, interest in others (both professionally and personally) and good nature.

Paula Hannaford of the National Center for State Courts has known John since she was a first year law student at William and Mary in 1991. She worked as an extern on the Rules of Professional Conduct project and has continued her friendship with John in the years that have followed:

If I had to articulate a single thing that I learned about John that made the biggest impression, it would have to be the open-mindedness that he brought to the committee's deliberations. In his professional career, John has developed a highly respected expertise in legal ethics, but his professional knowledge is grounded in a personal system of values about lawyers' responsibility for contributing to the public good. In some people this combination of expertise and personal commitment lends itself to arrogance, dogmatism, and inflexibility. Not so with John, who always listened to competing arguments carefully

and politely before reaching any conclusions. Although he rarely compromised on issues that touched on his core beliefs about lawyers' obligations to clients, more than once he changed his initial position after hearing a different viewpoint about the practical effect of a particular policy option. Some heated debates took place over the five years that the committee was in operation—and some strange bedfellows [were] made on particular issues—but I never once saw him express any rancor against anyone who disagreed with him.

For me, John's example was a lasting lesson that complex problems rarely have simple solutions and that successful solutions require careful consideration of all viewpoints.

Barbara Ziony, who has worked with John as a member of the ACLU Legal Panel, gets the last word in this tribute. She recalls that she first heard about John when she was contemplating moving to Virginia in 1980. Through her sources in the Legal Aid community, she learned of the legendary John Levy.

When I started working at the Legal Services program in Petersburg, my co-workers' frequent references to John lead me to believe he was a mythical being. Since that time, I have had the pleasure of knowing John as a "real person." As we all know, his quiet demeanor hides a sharp wit, generous spirit, and analytical intelligence that benefit all he works for and with. He is one of the few people where the reality and the myth coincide.