

Save Me From Myself

I wonder how many lawyers who have been in practice for awhile would like to go back to the hallowed halls of the law school to see if they could handle the able interrogation of an experienced law professor? Well, if you have thought about doing it, think again!

Daughter #1 is already a lawyer in my firm, and I never thought about attending any of her law school classes. Doubtless, I was wise not to do that because I might have embarrassed her, given that she wound up graduating with honors, after having served on the Law Review.

Unfortunately, curiosity took hold of me, since I never attended a foreign law school. Daughter #2 is a law student in Israel. After she graduated from college in the United States and did a year of study in Israel she served in the Israeli defense forces. Anyone who has been drafted into the Israeli Army, especially in a supervisory position, believes they can easily study law. I remember looking into such a program myself when I was younger than Kaila, and I could not possibly imagine learning Hebrew well enough to study law in that country.

The classroom was relatively small, compared to the ornate halls of Georgetown. The class was small, and the professor certainly was not physically imposing. Kaila obtained permission for me to sit in on the class, and I was filled with glorified expectation.

Naturally, I was the first person the professor – whose name I do not recall – interrogated. All I know is that he was from Argentina, teaches in the Israeli Law School, and seemed to be a master of a number of differing legal systems and languages. The course was Comparable Law, and it was the method of the professor to discuss any number of legal systems in examining the Israeli.

Israel does not have a constitution, but rather a number of organic laws expressing in great detail subjects such as free speech. The professor asked me a question too complex for me to recall at this time, addressing the *pragmatica* of the law. This is Latin for *sanctio pragmatica*, which was an edict issued by Charles VI on 19 April 1713 to ensure that the Habsburg hereditary possessions could be inherited by a daughter. With the passage of time, the concept of *pragmatica* in the law came to encompass an understanding of the European code system.

I had no idea what the answer to the question was, but I tried to wing it. That was also a mistake. The professor kindly, but firmly, re-asked the question, thinking I would catch on, but perhaps he was just trying to give me an opportunity to dig a deeper

hole for myself. Once again, I obviously did not answer the question to his satisfaction. Finally, the professor answered it for me, and permitted me some commentary upon his answer to the question that I was supposed to answer.

All in all, it was an embarrassing but an enlightening experience. During the 3-hour interrogation/lecture, with a 10-minute break, the professor widely ranged over fields of law as diverse as the Napoleonic Code, the German *Geist Folk* (the meaning of which I did not get at the time and still do not understand). He also touched upon the Italian Code, and then he had the audacity to compare and contrast answers being given by the students with the American system, including principles of the American Law Institute. Aha! Here is something I can talk about. After all, I am a Life Member of the American Law Institute. Even at that, the professor managed to mold me into his thinking and extracted from me an acknowledgement that the American Law Institute is at least an attempt at a Code standard. Of course, the Codes of Europe are quite detailed and do not rely upon much in the way of case analysis. The American Law Institute Restatement, is basically a reformulation of principles developed by analysis of common law development. The professor and I reached an uneasy accommodation on the role of the American Law Institute.

During the break, I had an opportunity to speak with the good professor in connection with the relationship of state and federal courts and the requirement that federal courts in diversity cases rely upon state law. So arcane, complex and prolix is the American system that even one as bright and knowledgeable as the Israeli law professor seemed to falter just a bit at integrating the American system into his discussion of constitutional law principles.

In spite of the many defects within our legal system, it is clear that the professor and lawyers in general, look to the American legal system with a large measure of respect. Our jury system is still the jewel of the civilized world, although we seem to be willing to toss this nugget out the window in spite of the admiration of others.

I complimented the professor on his amazing grasp of differing legal systems and how they relate to particularized issues that he was interrogating the students about. He indicated, with some obvious disapproval, that he has heard that some American nominees for judicial positions have been virtually disqualified because they have indicated they might look to other legal systems for guidance. He clearly thought that such parochialism was unjustified. The Israeli legal education specifically looks at the best that other legal systems have to offer, including the United States legal structure.

I was also greatly impressed by the sagacity of some of the students. A woman sitting in back of me who possessed a college degree and a Master's degree from the United States expounded upon the questions put to her with great acumen.

Kaila, for her part, was delighted that I was present since it meant that she was not called upon. Whenever the professor crosses the rubicon to call upon American legal principles, he cannot resist the careful interrogation of his American-Israeli student. The beating which I took gave Kaila some respite.

It was a marvelous experience to sit in as a student in Kaila's Israeli law school class, even if I resembled the family dog after he did something naughty. The professor did acknowledge to the students that, "Well, Mr. Rieders obviously has not read the materials." He was quite correct, but I am not sure if I would have done any better, even if I had studied the readings and case law.

After I returned to the United States, I was conversing with a friend of mine who is very knowledgeable in the civil rights field. He mentioned to me that the system for filing job discrimination claims in the United States is so bad that virtually any administrative claim filed before the Pennsylvania Human Relations Commission, will not be acted upon or the plaintiff will get a bad finding. The system simply functions to provide a year delay to a defendant, after which time the plaintiff can file in federal court. Delaying a claim for a year, while nothing can happen, is terribly adverse in any legitimate case and would be unacceptable to any civilized legal system. We have come to accept this in America.

Another thought which came to mind is how casual we are with protecting the right to trial by jury. The United States Supreme Court has rendered decision after decision which has indicated that a written instrument by large corporate players could force a consumer into a system which is extrajudicial, expensive, and generally worthless. Class actions are under constant attack, and access to the courts by individuals seems to be in great peril.

One is reminded of the worlds from the old Joni Mitchell song, "Sometimes you don't know what you got 'til it's gone." The "disappearing jury trial" is a reality, and no longer a bad dream.

There was a time when Democrats and Republicans both took for granted the legitimacy of the Seventh Amendment to the Federal Constitution and protected the right to trial by jury like a parent's first-born child. No longer is that the case. Virtually every time I am asked to review legislation on the federal or state level, I am presented with some new and novel approach to undermine the important role of the courts as the third branch of government. Oddly, the judicial system is the least expensive of the three coordinate and equal branches, where judges are generally underpaid and technology to make the process more efficient is underfinanced.

My experience with Kaila in Israel enlarged my world view somewhat. It made me realize that we need to work harder at protecting and improving our legal system

and access to the courts. The experience made me more appreciative of the multifarious developments in the administration of justice going on throughout the world.

Good luck, Kaila, and study hard!

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