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REMEMBERING DAVID KADANE: TEACHER, MENTOR, COLLEAGUE AND FRIEND

*Joseph Rosenberg**

My first glimpse of David Kadane was through the small windows in the closed doors of a lecture auditorium. As I passed by, my casual glance became riveted on a white-haired, gesticulating figure stalking through the aisles of the room. Intrigued, I peered through the window. I heard his voice, rising and challenging the class of law students. I felt happy that I was not enrolled in "Property" that semester, as I had too little faith in the traditional law school pedagogy to imagine that this "wild" professor could be any less oppressive than Professor Kingsfield in "The Paper Chase." Alas, at that time I never gave myself the opportunity to test my preconceived notion, for it was 1986, my last year as a member of the first graduating class at the City University of New York (CUNY) School of Law, and David Kadane, despite his advanced years, was finishing up his first year as a professor of the fledgling institution.

Several years later, after a stint in a civil legal services office, I found myself back at my *alma mater* as an adjunct professor in the clinical program. After a semester of handling cases in a clinic that was disrupted and discontinued due to a denial of tenure to the supervising attorney, it was suggested that I supplement my duties by helping David launch a "Wills Clinic" for third year students.

As I blurted out my enthusiasm for the assignment, the memory of the ranting, excitable lecturer crept back into my consciousness. It was thus with a mixture of eagerness and anxiety that I anticipated my first meeting with David. I wondered if I would meet with the approval of this demanding professor, cut in the traditional mold. After all, I was a product of CUNY Law School, and although I had passed the bar exam on the first try, I had immersed myself in the alternative legal education that was in full flower during those first years of the law school. David seemed to embody some aspects of

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traditional law school pedagogy that I had consciously sought to avoid in my decision to attend a school that would offer me an alternative, rather than a traditional, legal education. Although I had learned what I thought to be more than my share of doctrine, I feared that dormant, yawning gaps in my knowledge of "black letter law" would emerge and render me incapable of collaborating with an intellectual giant like David Kadane. Worse, I feared his wrath because I was more comfortable with representing tenants in housing court than with dissecting future interests in real property; with government entitlements than with testamentary distributions; with the rule in favor of the treating physician in social security disability cases than with the Rule Against Perpetuities.

As with most fears (however rational), the occurrence of the feared event proved to be much easier to handle than the anxiety preceding it. As I recall, the first meeting between us occurred in the presence of the executive director of the clinical program. David was charming, humorous, respectful, energetic, insistent, challenging, and, best of all, welcoming. David had the wisdom to utilize my strengths and improve my weaknesses. In those early days, David was truly my teacher, mentor, and colleague all rolled into one.

That first semester, we had about ten students. They were all enrolled in David's course in Wills, Trusts and Estates. We met twice a week in a room where we all sat behind desks arranged in a circle. Because much of the substantive law was covered in the lecture hall, we spent our time talking about interviewing and counselling, doing "case rounds," and discussing issues that arose out of our client interviews and will-drafting. The recurring message that David conveyed to these students was one of empowerment. It was not delivered explicitly, as in "I want to empower you," but in a myriad of subtle ways, as parts of discussions that, on the surface, appeared to be concerned with other matters.

For third year law students about to graduate from a law school still trying to establish its credibility (and accreditation) with the mainstream legal profession, David's message was revelatory and somewhat revolutionary. Because David was "established," an intellectual giant, and a leader in legal education, the message had a mixture of authority and authenticity in a way few could match. The message was simple, although applying it was more complex: be kind and respectful to your clients, learn from them, and approach legal problems from a fresh, original perspective that is enriched and informed, but not imprisoned, by the structure of the law.

What was so extraordinary about this message? It dismissed and demystified much of what passes for accepted legal practice, while demanding that students compete, achieve and surpass the intellectual landscape of most lawyers. For example, David's theory of interviewing was wholly client-centered. Although this is consistent with prevailing clinical pedagogy (which he may have helped shape), David went beyond mere lip service and gave insight into the fears and perceptions of clients as a way of making the interview more than a lawyer's exercise in checklists that categorized clients according to their legal problems. David knew that students (and lawyers) freshly equipped with the illusion of expertise all too easily succumb to the allure of the power imbalance inherent (but avoidable) in the lawyer-client relationship. He urged students to engage their clients in conversation in an effort to know them as individuals, and he assured students that the substantive information necessary for the drafting of a will or other document would emerge. He believed that meticulous preparation for the legal and human aspects of the interview would enable students to discard the crutch of suffocating interview checklists. It was an exhilarating, powerful and scary message! Prepare thoroughly, clear your mind, look your client in the eye, and trust yourself enough so that you can place the needs of your client ahead of your own needs as a lawyer.

The other area in which David's message was particularly resonant was in legal drafting. Wills, perhaps more than other legal documents, rely heavily on the use of difficult and convoluted legalese passed down through the ages. It is extremely difficult for students, once exposed to form books, to craft their own language to express the intent of the client. David took on all the familiar, superfluous phrases (last will and testament; rest, residue and remainder; give, devise and bequeath, etc.) and challenged students to understand the purpose of each of the anointed words and identify their legal rationale (if any) and make informed decisions as to the style each student wanted to use in her own drafting. This message was potentially empowering to students willing to take on its challenge, for it held open the possibility of originality and creativity, if one was willing to question and dissect, and not merely follow. It gave students (and lawyers) permission to be puzzled by archaic and confusing language so often preserved by lawyers as a prop for their own impenetrable expertise: the emperor has no clothes, but you damn well better know how to make your own cloth.

During that first semester, I quickly realized that David's bark

was worse than his bite. Beneath what, at times, was a gruff and tough exterior, he was a kind and caring person with a twinkle in his eye. My position that first semester was part-time and I occasionally had to care for my then two-year-old daughter Emma during the day. Although I tried to avoid it, I was forced several times to bring Emma to class. David took an immediate liking to her, and it was easy to see David as a doting grandfather. It helped that Emma didn't disrupt the class (she ate her bagel quietly and emptied the contents of my wallet without making too large a mess), but it was David's willingness to accept her presence that reinforced my feeling of self-worth and comfort as his colleague and a person.

At the end of each semester, David invited the students and support staff in our clinic to a dinner at his home. The genial attitude of David and his wife Helene quickly helped the students overcome their inevitable shyness and awkwardness. As David played host and encouraged everyone to drink and be merry, his warmth, Helene's cooking, and their stories carried the night.

As we worked together that first summer preparing for the following year, David constantly challenged and encouraged me to grow as a teacher and a lawyer. He involved me in several of his cases and projects, which relieved him of some work, but mostly allowed me to experience different areas of practice.

Although health problems curtailed David's participation in the clinic during the 1989-90 academic year, his presence remained unmistakable. More than I had realized, he had subtly prepared me to assume the responsibilities of running the clinic. As I struggled to maintain the standards that David had established, I continually appreciated the magnitude of David's intellect and the breadth of his expertise. His thoughts and ideas, particularly those most difficult to grasp initially, consistently echoed back and enabled me to achieve greater clarity and understanding. My ability to grapple with, and sometimes solve, pedagogical and substantive legal dilemmas owes much to David's accumulated insight and perception, which provided steady guidance in an often stormy sea of complex material, student needs, and client problems.

Fortunately, David's health improved enough to allow him to return to work during the 1990 spring semester. Although somewhat more frail than before, he quickly demonstrated that his health had not pacified him or made him more tolerant of what he regarded as the unsupportable positions that characterize the legal status quo. When exposed to an attorney's theoretical perspective on estate plan-

ning, shaped, in large part, by the economic pressures of the marketplace, and a drafting style dependent on the use of conventional, obscure, and unnecessary legalese, David displayed his trademark contentiousness, passion, and ideology. Not willing to simply “go along” and appease, David openly challenged what he considered to be the fundamentally erroneous assumptions of this attorney. Although it made for some uncomfortable moments, David’s forceful honesty caught the attention of the students and provoked constructive discussion on the power imbalance between lawyer and client, the relationship between “good writing” and the often convoluted writing of lawyers, and how values inevitably shape one’s lawyering philosophy.

Despite his unpredictable health, which caused him to tolerate (in his own words) periods of “incarceration” in the hospital, David continued to be productive and intellectually challenging. His keen devotion to students and the mission of CUNY Law School drove him to take on responsibilities that most others, regardless of health or age, politely decline. For instance, during the semester break in the winter of 1990, he fulfilled his promise (despite his health problems) to teach a “mini-course” on the Rule Against Perpetuities, that tormentor of professors and students alike. He also completed an article on the Rule that was posthumously published late last year in the *New York State Bar Association Journal*.

When his health prevented him from working regularly at the law school, I received a steady stream of notes and suggested problems based on recently decided New York cases dealing with wills, trusts, estates, and the problems of the elderly and infirm. These communications alerted me to recent cases of interest and raised issues suggested by related cases that were instructive to our students. (It is worth noting in this regard that David accurately predicted, based on his diligent review of the advance sheets, several major issues appearing in two essay questions on the July, 1990, New York State Bar Examination.)

David constantly cajoled and encouraged his colleagues to use their clinical experiences as the basis for writing scholarly law review articles. David was a true believer in the harmony between clinical work and scholarship, and the need for clinicians to structure their time in a way that facilitates research and writing. In a young institution with many nontenured colleagues, his leadership in this area was critical and is sorely missed. David exhibited a degree of care and concern for his colleagues, as people and professionals, that is rarely matched by professors consumed too much by the ticking of their

own tenure clocks.

One of the last classes that David taught was on "counseling and interviewing the elderly client." Because he had not been a regular presence that semester, many students had no idea what to expect from someone whose reputation (and mythology) preceded him. He began his talk by complaining how difficult it was to "push up that headstone" to get to work. Nervous laughter yielded to unabashed appreciation of his humor, which, true to form, illuminated and instructed on several levels. David covered many issues that day, but the central message was one of empowerment: strip away the baggage of checklists, the constraints of substantive legal rules, and the inherent power wielded by the professional; pause long enough to look your client in the eye and create the opportunity for that person to share their needs, concerns, and hopes with you. Although emphasizing the critical importance of preparation and mastery of the relevant substantive law, David made it clear that an authentic, human approach to a client is far more effective than a lawyer-centered agenda that obscures what is really "bugging the client."

David always practiced and preached the values of the humanistic public interest lawyer. He achieved more than most even aspire to, yet freely admitted his ignorance. He had fundamental faith in the intellect, idealism, and creativity of law students and lawyers, and in our ability to break through the barriers that separate us from our clients, from each other and the realization of our goal of a just society.

I suspect that it will take many years before I fully absorb David's teachings. As I struggle to end this tribute, the sadness that I feel only reinforces how much I miss David. He will not soon be forgotten.