

IN MEMORIAM: PIERRE ROLAND LOISEAUX (1925-1998)

*John D. Ayer**

Someone said that the way you judge a man is by how he treats people who can't do him any good. Pete Loiseaux scores as high on this test as anyone I know. Pete was a small-d democrat with a sense of dignity and a suspicion of pretension that made him at least as easy among janitors and counter clerks as he was among the great bow-wows of academic life.

You could see it in the sport jackets. Pete's taste ran, not to garish exactly, but to a studied aesthetic of off-the-rack. It was a source of good-natured comedy (in which he was happy to share), but there was a larger point. The point was that Pete was the last guy in the world who would wear a \$2,000 Italian suit and he would have looked ridiculous if he tried it.

Pete's world-view animated his attitude to life, and also to the law. I remember a welcoming speech to the incoming class, one year while he was dean. It is an occasion that lends itself to grand pretension, and to flights of fancy about the possibilities of the law. It wasn't Pete's style. Rather, Pete began with something like, "Hello," and then said: "some lawyers make money, but they work hard for the money they make." To the best of my recollection, that was about it. Nothing here that you could carve on the wall of a monument, but that was precisely where Pete did not want to be.

But this posture should not be misunderstood as an indifference to the possibilities of the law. The fact is, Pete could be passionate about what he saw as injustice. One of his ex-students (who could have written this piece better than I) writes:

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I was in his small section contracts class during Watergate and the Saturday night massacre. Pete gave us a very stiff sermon I shall never forget about the power lawyers wield in society and our obligation to wield it responsibly and for the good of society. Of course, the last thing I felt at the time was powerful, but his intensity impressed me. I remember him saying that if he could figure out which of us was morally unfit to be a lawyer, he would have us thrown out of school right then and there. In a cynical age, his moral outrage was unforgettable. It changed forever the way I think about the legal profession.

Pete's attitude carried over to the specifics of his academic life. Someone once asked him what he taught. He said: "I teach the dull stuff people depend on." That about gets it: he started out doing labor law, where it is easy to imagine him as a friend of the working stiff. But one suspects that labor law was too glamorous for Pete. By the time I met him, he had moved into commercial and bankruptcy law. His reputation was undisputed: he was already a member of the National Bankruptcy Conference, where he helped to shape our bankruptcy law. But even here, he tended to gravitate, as if on purpose, to the unglamorous and the god-forsaken. Some of his most important scholarly work, for example, involved the intersection of bankruptcy and divorce. The relationship is hardly fortuitous: I have a friend who says the bankruptcy court and the divorce court ought to be set next door to each other, for the convenience of the client. Real people get entangled in this process, and real people get hurt. I suspect that plenty of other scholars had considered writing on the topic and decided to move onto something else more fun. Pete made it a project, and did it well.

I first met Pete in 1972 when he came to Davis as a faculty candidate and I drew the task of giving him the grand tour. We talked about the holder-in-due-course rule, and he asked me about real estate taxes (I didn't know the answer). I suppose if I had any sense, I would have been threatened. Pete was a big name in a field where I was just a beginner. If I had been smart enough, I would have understood that by letting him come here, I was in effect putting my career in the hands of a perfect stranger.

Lucky for me I wasn't smart enough. The fact is, of course, I couldn't have put my career in hands that were any better. He was

a mentor from the beginning. Without clogging the record, let it be said only that he helped me make several pivotal career connections. And more than once, he kept me from making a fool of myself. One can only hope for more friends like that.

It was Dan Dykstra who first made the case for Pete as a faculty candidate. As I remember it, Dan said that at Texas (where Pete taught before he came here), if you asked both students and faculty to name the one person in whom they had the greatest confidence, they would have named Pete. It was this capacity to inspire confidence that made Pete a natural candidate for the deanship here.

As it turned out, I don't think Pete got a lot of pleasure out of his years as dean. Those were, in the sense of the Chinese proverb, interesting times, rich in intrigue and posturing, not restricted to the faculty wing. Pete wanted the job and he wanted to do it well, but the practical fact is that his suspicion of cant and pretension were virtues not well suited to the times.

His term ended violently and prematurely of course, with his heart attack. He could have done without it, I am sure, but there was a blessing in adversity. That is: I think Pete was pleased with the confidence the chancellor showed by sending him off to Cairo to direct the ag development project. After Egypt, his friends were delighted to welcome him home and to help him to fold into the role of distinguished elder.

I had the office next to Pete's for many years, which gave me a peculiar opportunity to see his virtues at work. Specifically, I knew how many students came to depend on him as a counselor. Students came to him, often in cases where life was coming unhinged. Pete must have done something right: they stayed a long time, and they seemed to go away feeling better. I think I am also safe in asserting that his callers often came from those segments of the community most likely to be skeptical about the institution, least likely to call on the administration for help. Pete's temperamental populism communicated itself, and made it clear that he was one that the distrustful could trust.

If ever I had any doubt about Pete's place in the admiration of his students, I was disabused by that most sincere form of student flattery, the law student show. Indeed if I had to choose just one image of Pete to carry away with me, it would be the image, not of Pete himself, but of the student set up to mock him in one of the funniest student shows I ever saw anywhere. It seems that somehow

— hey, who needs a reason? — the faculty had entered a beauty contest, and each had to appear on stage in a bathing suit. For the “talent” portion, the “contestants” had to answer questions from — of course — the first year curriculum.

The whole thing was a stitch and a general air of hilarity abounded. But as long as I live, I won't forget the Pete look-alike, demure in a one-piece dusty-green number, her (his?) head wreathed in tobacco smoke (I wish Pete had not smoked as long, or as much). The interlocutor asked the question. I haven't the slightest idea what the question was, but it went on for (as it seemed) about ten minutes. Then there was a pause. “Pete” took another puff on his (her?) cigarette and growled: AH? HOW DO I KNOW!

Okay, maybe you had to have been there, but it was a show-stopper. I can think of 20 faculty members who would cheerfully push their grandmothers in front of streetcars for anything like such a display of affection.

There is a story about how they asked Harry S. Truman what he would do after he left the presidency and got home to Missouri. “I'll take the suitcases up to the attic,” Truman said. Yes, that gets it about right. Pete was the kind of guy who would take the suitcases up to the attic, and I will miss his good company as long as I live.

Professor Loiseaux: A Remembrance

*Debra L. Perschbacher**

Fourteen years ago, Professor Loiseaux was my first-year Contracts professor with a small section of thirty students. Newly uprooted from my home in Vermont to attend King Hall, I knew no one and made a conscious decision to sit exactly halfway between the front and the back of the classroom (room 2004, for those

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readers familiar with the building), on the aisle. I wasn't spared for long.

In addition to our casebook, which Professor Loiseaux co-authored, we were required to purchase the Uniform Commercial Code, a thick, heavy, softcover volume with a white and blue cover. I would recognize it to this day. I was one of the few students who had brought the weighty book to class, which resulted in my de facto appointment as the official reader of the Code's provisions. For the rest of the year, whenever Professor Loiseaux wanted a U.C.C. provision read aloud, or the index searched for an applicable section, he simply said my name, with an inflection on the last syllable to indicate that the job of reading — or finding — was mine.

I liked Professor Loiseaux from the start; he reminded me of my father. The similarity didn't stem from his appearance, although he and my father were fairly close in age, short in stature, and had retained a full head of silver-white hair despite reaching their sixties. The similarities were in the two men's quiet, unassuming, gentle demeanor, together with Professor Loiseaux's habit — and my father's trademark mannerism — of grinding his fist into the open palm of his other hand as he paced back and forth across the front of the classroom.

His enthusiasm for Contracts was obvious; his pace, both literally and figuratively, was measured and methodical. His favorite cases would have been apparent to any observer. He practically crooned over the beginning of Cardozo's decision in *Wood v. Lucy, Lady Duff-Gordon*:¹ "The defendant styles herself 'a creator of fashions.' Her favor helps a sale. Manufacturers of dresses, millinery and like articles are glad to pay for a certificate of her approval."² He particularly enjoyed the old cases: *Poussard v. Spiers & Pond*,³ the 1876 case involving the sick opera singer; *Sherwood v. Walker*,⁴ the 1887 case involving replevin for a cow; and *Raffles v. Wichelhaus*,⁵ the 1864 case involving two ships from Bombay that both were called the "Peerless."

I wanted to tutor his Contracts class my second year, but he had been awarded a Western Europe Fulbright grant for research in

¹ 118 N.E. 214 (N.Y. 1917).

² *Id.*

³ 1 Q.B.D. 410 (1876).

⁴ 33 N.W. 919 (Mich. 1887).

⁵ 2 H. & C. 906, 159 Eng. Rep. 375 (1864).

Germany, Belgium, and England. We had many long conversations the summer before he left. I learned his demeanor and mannerisms had reminded me of my father for good reason: He, too, was a New Englander. He had attended the University of New Hampshire as an undergraduate (I attended the University of Vermont) and his parents still resided in New England (as did mine). He had very definite ideas about my class rank, the career path that I should pursue, and my short- and long-term goals. Only very gradually did I learn of his prominence in his field. He was, among other things, a renowned expert in the areas of commercial law, contracts, and bankruptcy, a Fulbright scholar, a member of the American Law Institute, and director of the UC Davis Egypt AID Agricultural Development Systems Project.

When I suffered a devastating personal loss my second year, Pete wrote to me from Europe to remind me that he had suffered a remarkably similar personal tragedy, and that life goes on. Our friendship continued my third year, when he returned. I prepared Thanksgiving dinner for several of us who were alone that year; Pete was one of two faculty members who came. Through the year, we talked about life, travel, personal matters, the legal profession, and law teaching.

Our contact was regular but less frequent after I graduated. I saw him at various law school events; he came to my wedding. A few years later, we had dinner with Pete and Judy at their Davis home, and I realized my friend was struggling. His Alzheimer's Disease gradually, insidiously, robbed him of his ability to recall and to recognize. Pete's struggle was particularly painful in light of his extraordinary intellect, his love of socializing, and his delight in storytelling.

Pete was a classic New Englander in the best sense of the term. He was not a complainer; New Englanders are well aware of life's occasional harshness. He truly loved teaching, and he truly cared about the people who were a part of his life. He stimulated my interest in teaching, and his immediate legacy is that I am finally taking actions in my own career that he urged me to do years ago. I can hear the quiet chiding as he shakes his finger at me, and I can see his smile as he relents and chuckles softly. Goodbye, Pete. I'm glad I knew you.

Pierre Loiseaux: A Master Teacher

Jay Lawrence Westbrook *

The best teaching is the seduction of learning. Pete Loiseaux was a master seducer.

Pete was also an outstanding scholar: a member of the prestigious National Bankruptcy Conference, an editor of *Collier on Bankruptcy*, and an author of a leading bankruptcy casebook (with Hawkland), among many other scholarly accomplishments. But his most remarkable talent was his extraordinary ability to teach.

At the core of that ability was inclination: he loved to teach and it showed, every day in every class. His method was not the dazzling mastery of a Charles Alan Wright or the intricate intellectual subtlety of a Russell Weintraub, both of whom were among his colleagues at Texas when I was a student there.¹ But neither was he just a classroom charmer. He was charming and funny, but that was dessert. The Loiseaux entree served in each class was constructive skepticism and a relentless unwillingness to settle for a superficial answer. On top of that, the diners had to cook for themselves. He was there only to advise. The point was not the meal, but learning how to cook haute intellectual cuisine.

"I have been accused of hiding the ball. There is no ball." That statement is the one all his students will remember. On one level, it was a slightly old-fashioned articulation of a profound post-modern truth. It also reflected his commitment to do what many law teachers are today too impatient or too lazy to do: to require their students to learn to think and to permit them to discover how delightful a thing that is to do. It is so much easier to lecture about rules and receive the waves of worshipful gratitude that wash down to the podium when you do.² It is so hard, and unpopular, to re-

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¹ And, happily, they are my colleagues still.

² The lecture also provides more opportunity for the professor's profundities about policy, economics, and Kierkegaard.

quire students to be prepared, without which it is impossible for them to learn analytical methods as opposed to a pound of doctrine a day.³ Pete could do all that and still be beloved because it was obvious how much he cared about his students. That caring was especially evident in the way he gave extra encouragement to every student who was in difficulty and struggling with self-doubt.

On the last day of our Contracts class in that distant time when I had the privilege of being Pete's student, a remarkable classmate, Joe Armstrong, entered the classroom with a gorgeous model carrying "the ball" with all of our autographs. It was displayed in Pete's office for many years. We could chance that joke because he was utterly, completely unpretentious — and completely unimpressed by the pretensions of others.

Pete's love of teaching and his commitment to the intellectual joy of legal analysis helped encourage a number of his students to become teachers. Our class at Texas produced three: one of his favorite students, Professor Douglas Whaley of Ohio State Law School, Professor Martha Field of Harvard Law School, and me. In my case, his encouragement and advice meant everything in my decision to leave a partnership in a firm for an untenured position at Texas.

One of the satisfying things about teaching is the sense of being one link in a long chain of teachers, generation to generation, renewing the hard-won victories of reason and civilization. Pete Loiseaux was an important link in that chain. His personal magic will long survive in his students' hearts and in the living of their lives.

³ Professor Wright used to rely only on volunteers for class recitation and never, ever lectured. If no one volunteered, he would simply leave the classroom. I do not know if he follows that rule to this day, although I hope he does.