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TRIBUTE TO PROFESSOR JONATHAN L. ENTIN

The editors of the *Case Western Reserve Law Review* respectfully dedicate this issue to Professor Jonathan L. Entin.

Bryan Adamson[†]

In reflecting upon Professor Jonathan Entin's legacy and "changed status" (not retirement), I must start with our conversation about witches.

"*Men feared witches and burned women.*"¹

When Professor Entin uttered that quote in the spring of 1988, I was delightfully taken aback. There I was, in my second semester of law school, in my Property class, and my professor was talking about witches. Well, of course, he wasn't talking about witches *per se*. I must admit that today I do not recall exactly why he said it. He might have invoked Justice Brandeis's famous passage while covering the private property–due process–free speech case, *Pruneyard Shopping Center v. Robins*.² Alternatively, it could have in the context of a property owner's irrational behavior being tested under a reasonableness standard. In any event, Professor Entin's invocation of that immortal excerpt from Brandeis's *Whitney v. California*³ must have made sense at the time because he was never one for non-sequiturs.

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1. *Whitney v. California*, 274 U.S. 357, 376 (1927) (Brandeis, J., concurring).
2. 447 U.S. 74 (1980) (holding that the Fifth, Fourteenth, and First Amendment rights of a private shopping mall owner were not violated by California's constitutional provisions allowing individuals to engage in speech activities on private property).
3. 274 U.S. 357, 376 (1927). The Supreme Court, in a unanimous decision, upheld Charlotte Whitney's conviction under California's syndicalism statute for assisting in organizing a Communist Labor Party. *Id.* at 357. That statute defined syndicalism as anyone organizing, assisting, or knowingly becoming a member of an organization that espouses "any doctrine or precept advocating, teaching or aiding and abetting the commission of crime, sabotage . . . or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change." *Id.* at 359–60. Though the Court upheld the statute's constitutionality under the Fourteenth Amendment's due process clause, Brandeis wrote separately to make the distinction between mere *association*

At the time, I had no idea of the statement's source or jurisprudential legacy. After all, I had not yet been fully introduced to constitutional law generally, nor First Amendment law specifically. The hook for me was this talk about *witches*. In my *property* class. It was that kind of talk which led me to visit Professor Entin's office later that day.

And what an office it was! Anyone who has been in it knows. Books everywhere—on chairs, on the floor, climbing walls. Mounds of books, papers, tablets, and manuscripts seemed to cover every square inch of his desk that he was sitting behind (and perhaps—no, likely—wearing that red sweater). After finding a place to sit, I told Professor Entin that his quote reminded of one of most intriguing works I had ever read, *Salem Possessed: The Social Origins of Witchcraft*.⁴ In that book, historians Paul Boyer and Stephen Nissenbaum performed a painstaking analysis of deeds, court records, land records, letters, diaries, and maps⁵ to offer an original take on the infamous 1692 Salem, Massachusetts witch trials: property ownership patterns, as well as the disparate economic and political interests that emerged from those patterns, best explained the motivations of the accusers and their attitudes toward the accused and their defenders.⁶

Of course, Professor Entin knew the story that I had learned as a college freshman. In fact, he had grown up in Quincy, only a few dozen miles south of Salem. For the next several minutes, across the desk—which resembled a miniature version of the New York skyline—we discussed the Porters and the Putnams, Samuel Parris, and wealth disparities between Salem Town residents and Salem villagers. We rehashed the theories about the role land ownership and proximity to the (literal) economic stream of commerce (Salem's harbor) played in the accusations of witchcraft. We talked about me and my law school experience thus far. That conversation blended my learning of property law with history and the First Amendment. It remains one of the most memorable and impactful conversations of my law school experience because it marked my first genuinely personal connection with a law professor and the beginning of an invaluable mentorship. It would also be the foundation of a sentiment that remains with me to this day.

with individuals and dangerous *acts* (“The novelty in the prohibition introduced is that the statute aims, not at the practice of criminal syndicalism, nor even directly at the preaching of it, but at association with those who propose to preach it.” *Id.* at 372–73 (Brandeis, J., concurring)), and the need for the government to demonstrate a “clear and present danger” as to the former. *Id.* at 379. (applying the test first articulated in *Schenck v. United States*, 249 U.S. 47 (1919)).

4. PAUL BOYER & STEPHEN NISSENBAUM, *SALEM POSSESSED: THE SOCIAL ORIGINS OF WITCHCRAFT* (1974).

5. *Id.* at ix–xi.

6. *See generally id.* at 80–132.

But that office visit was not my first connection with Professor Entin. During the previous fall semester, I came to know him from our orientation days and through second- and third-year students who knew, respected, and admired him. Even though I was not in any of his classes my first semester, he would “check-in” on me periodically. I specifically recall his words of encouragement during and after my first semester exams.

Professor Entin’s regard for the whole student was not limited to me. He was especially beloved by the law school class of 1990 precisely because of the way he engaged us inside and outside of the classroom. Walking into law school having not a clue about nonpossessory interests, vested remainders, or the Rule in Shelley’s Case, Professor Entin made the arcane accessible. In the classroom, he was demanding, with a brilliant capacity to parse and compare judicial pronouncements while articulating social implications of judicial outcomes. He was also fair and respectful toward everyone; he was never one to engage in student humiliation or embarrassment. He taught without condescension, and while rigorous, he exercised a most humane form of the Socratic Method.

Outside of the classroom, Professor Entin displayed a similar humanity, and was the consummate students’ professor. He was actively involved in co-curricular and extra-curricular endeavors. Professor Entin was especially engaged with minority students and was, for example, an advisor to the Black Law Students Association. Professor Entin provided invaluable guidance to those of us competing in regional and national moot court competitions. Perhaps most crucially, he was always, always available to just listen. The regard students felt for Professor Entin is evident by his several “Teacher of the Year” awards.

The best example of Professor Entin’s value to students happened when he came up for tenure. The class of 1990 wanted to be sure that he had our full-throated backing and that his colleagues did, too. A few of us—including Capricia Marshall, Tim McDonald, and Mara Cushwa—took to drafting a letter to the promotion and tenure committee. In that letter, signed by scores of our colleagues, we expressed our deep respect for Professor Entin’s teaching, and emphasized the impact he had on our learning. We also expounded upon his influence as a law school citizen, with his willingness and ability to engage outside of the classroom as the finest measure of his character. We were proud to learn of the impact our letter had on the tenure deliberations. Most importantly, Professor Entin was granted tenure, ensuring that he would be there for us and the students who came after us.

After graduating in 1990, I began practicing law, yet fully intending to enter academia as a law professor after getting some invaluable experience under my belt. After working in corporate litigation representation for Squire, Sanders & Dempsey (now Squire Patton Boggs), then as a Cuyahoga County prosecutor, a teaching opportunity presented

itself. In 1995, I was invited to join the Case Western Reserve University School of Law faculty in its Milton A. Kramer Law Clinic Center.

While the word “surreal” does not begin to describe the sensation of one’s professors becoming one’s peers, it was a positively extraordinary time for me as a new teacher. Jon (I could now drop the “Professor”) continued to be a mentor and a friend. He gave me teaching advice relative to my clinic and non-clinic courses. When I was appointed as Dean of Students in 1997, Jon was one of my greatest champions and collaborators on student-centered programs.

Jon also supported my aspirations as a scholar. As a law student, then upon my joining the academy, one of the many things I admired about Jon was his intellectual command of history, politics, and constitutional and civil rights. Jon’s influence upon my “voice” on historical contexts and doctrinal principles with regards to equal protection, affirmative action, and education policy was an outsized one. He provided me with the best ideas and counsel. In my own modest way, I sought to emulate his scholarship in a strand of my work.

Jon also gave me the opportunity to meet one of my heroes—an icon and CWRU Law alum—Fred Gray. While I was a law student, Mr. Gray had visited the school on many occasions with Jon being one of the faculty members hosting his lectures or student conversations. The visit that was most gratifying, however, came around 1998. During that particular visit, Mr. Gray was to discuss his book *The Tuskegee Syphilis Study: The Real Story and Beyond*.⁷

Now, Jon knew my parents were born and raised in the Deep South, but had migrated north to Ohio in the mid-1950s. He also knew specifically that my dad was from Macon County, Alabama (of which Tuskegee is the county seat). However, up to that point, I don’t think he knew of the one degree that separated Mr. Gray and me: one of his law partners in his Montgomery firm was my father’s cousin—the recently deceased Solomon Seay, Jr. Amongst their storied civil rights work was their representation of the subjects of that study—some of whom were relatives of ours. Mr. Gray autographed one of his books to my father and what unfolded was an inspiring conversation that I will never forget.

In 2002, I set off for Seattle, Washington, ending my seven-year stint as a member of the CWRU Law faculty and the Cleveland community. Even after moving to Seattle, Jon and I remained in contact. Whether reviewing an article draft or listening to a scholarship idea, Jon continued to give me his time and consideration. He was also generous enough to visit and present at a law symposium I coordinated, which had *Parents Involved in Community Schools v. Seattle School*

7. FRED D. GRAY, *THE TUSKEGEE SYPHILIS STUDY: THE REAL STORY AND BEYOND* (1998).

*District No. 1*⁸ as its theme.⁹ The symposium inspired me to produce an essay applying Derrick Bell's interest convergence theory¹⁰ to public school funding equity reforms,¹¹ for which Jon provided remarks and historical resources. Jon's input was learned and invaluable.

Professor Entin—Jon—has had a singular influence upon me as a law student, lawyer, professor, and person. I retain the highest regard for his intelligence, fair-mindedness, and humility. He is one who has also left an indelible mark upon the calling of legal education. The academy—and the lives of the thousands of students who were fortunate enough to find themselves in his orbit—are all the more enriched.

When I left CWRU in 2002, Jon gave me a going-away present, and it was one that brought our friendship full circle: a book—*Salem Possessed: The Social Origins of Witchcraft*. Perfect. Inside the cover, Jon wrote a personal note. It was a note so apropos, I have to give those words back to him, with one update:

In commemoration of the first of many extended conversations; with thanks for the ~~fifteen~~ [thirty] years of friendship and courage, and with the hope of many more years as you embark on a new adventure.

Jon, I thank *you* for *your* friendship and courage. Here's to new adventures.

8. 551 U.S. 701 (2007). The issue in *Parents* was whether a public school, that had not operated in a legally-segregated manner or had been found to be unitary, could voluntarily classify students by race and rely upon racial classifications in making school assignments. *Id.* at 711. On cross-motions for summary judgment, the trial and appellate courts upheld the race-astiebreaker plan. *Id.* at 714. In a 5–4 plurality decision, the Supreme Court reversed, remanding the cases for further proceedings. *Id.* at 748. Finding that the use of race as a criteria of pupil assignment violated the Equal Protection clause, a plurality held that the only reasons a school district could adopt a desegregation plan would be: 1) if there had been a showing of past discrimination; or 2) if “racial balancing” was a compelling interest in K–12 education. *Id.* at 731–32.

9. The symposium, titled *Brown Undone? The Future of Integrated Primary and Secondary Education After PICS (Parents Involved in Community Schools v. Seattle School District)*, took place at Seattle University, Washington, in February 2008.

10. Bryan L. Adamson, *A Thousand Humiliations: What Brown Could Not Do*, 9 SCHOLAR 187 (2007). Bell's interest convergence theory posited that only when “policymakers perceive that [minority rights] advances will further interests that are their primary concern” do African-Americans gain civil rights advancements. *Id.* at 194 n.32 (citing DERRICK BELL, SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM 49 (2004)).

11. *Id.* at 209–11.