1981

Mason Ladd--In Memoriam

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66 Iowa L. Rev. 698-700 (1981)
I shall always have fond thoughts of my dear friends, Dean and Mrs. Ladd. I got to know them only recently—in the last six or seven years before his death. I was sorry I did not know them sooner. Of course, I always knew of the Dean's enormous contributions to the law of evidence. But I did not know, until I met him, that this was accompanied by an equally remarkable warmth and genuineness, a deep caring, and a charismatic presence (particularly on the podium). Nor did I know of the loving support and charm of Mrs. Ladd, an equal partner with the Dean in every way, a woman of keen intellect and massive good sense in her own right. Both had twinkles in their eyes even in the most adverse of times.

It was the Federal Rules of Evidence and the effort to carry knowledge of them to the bench and bar that brought us together. Dean Ladd and I found ourselves bumping into one another on the lecture circuit just prior to and following the Rules' passage into law. We invited each other to programs, and it was in unlikely Las Vegas, at a University of Iowa sponsored program, that we first got to know each other well on the personal level.

Mason would have been proud and deeply touched to hear that he was being honored with a symposium issue of the law review he loved, at the school he loved, by friends and contributors of such stature as those who join me here. It would have pleased him to be the cause of a major assemblage of important papers, furthering evidence scholarship as he did throughout his life.

A few incidents stand out in my encounters with Mason that epitomize for me the man that he was. The first time I heard him lecture was to a group of trial lawyers about hearsay, his favorite subject. He was already well past normal retirement age, but the fire and brimstone he brought to the matter had the audience transfixed. I was astonished at his energy and ability to convey several of the most difficult concepts in all of evidence law in a manner that had the impact and appeal of Perry Mason exposing the real murderer before the jury. There was even opportunity for audience participation. I hope he forgives me for cribbing one of his techniques. At one point in the lecture, quite out of the blue, he abruptly asked, "How many of you walked over here to this lecture from your rooms today?," to which a number of hands were raised, amidst considerable interest-engendering confusion as to why he should ask this at this point. He then proceeded to use the raised hands as an example of "assertive conduct" amounting to an implied statement under the hearsay rule. It was the jumping-off place for a discussion of

* A former student of Mason's, Paul F. Rothstein, writes here in remembrance of his former teacher and colleague.
the difference between assertive and nonassertive conduct and the whole
difficult subject of conduct as hearsay. I have seen many an audience lost
by a speaker in the thicket of that complex and important area. Not so
this time. On every subsequent occasion, as well as in everything he
wrote, he not only presented the deep, the profound, and the original,
but he did it in a way that was mindful of his audience and how best to
keep their interest. In short, he was a master teacher.

On another occasion, Mason and I stayed up late into the night
discussing that most arcane of subjects, presumptions. It was unusual for
him to postpone bedtime so long (he was fond of saying he was a farmer
and an early riser), but we had gotten caught up in our subject and
indeed were at loggerheads on a number of points. I had intended to
detail the discussion here, but as I began to put it on paper I realized
what a hopeless task that would be. In the area of presumptions especially,
to say a little is worse than saying nothing. Mason was so full of insights
on this subject, that I was left in awe. It was the first time that I had been
exposed to his mental processes other than through reading, hearing him
lecture, or engaging in brief exchanges. It was not the last. It formed the
pattern for discussions on other subjects later, such as privileges, scien-
tific evidence, the effectiveness of cross-examination for getting at the
truth, and alternatives to courts for dispute resolution. (Most of these
discussions, however, were conducted at an earlier hour.) He had
young, vibrant, imaginative ideas, on every subject that would come his
way. His comments were penetrating, fraught with marvelous examples,
and tough minded. He handled disagreement with tact and charm, but
without ever sacrificing the point he wished to make. On that evening, he
convinced me of something that I had rather strenuously argued against
on a number of occasions, against some formidable opponents: that the
position of the Supreme Court Draft of the Federal Rules of Evidence
that presumptions shift the burden of persuasion is the only workable
view.

He was also the only person I am aware of who had an official,
active connection with every major national evidence codification project
of this century. He worked on the Model Code, on the original Uniform
Rules, and on the Federal Rules (as a member of the parent committee
under which the Advisory Committee functioned). It was practically
impossible to come up with a problem relating to evidence codification
that he had not already considered. And yet he was patient enough with
all comers who would drink from the fount of his wisdom to start again
with them from square one, if need be, and even reconsider his own posi-
tion (although he usually proved to be right). How he found the time to
do all this; and to produce his prodigious, rigorous written output; and
to be the long-time dean of a leading law school (Iowa); and to heed the
call to come build (by being dean), a new law school in Florida (which he
successfully did)—and yet to keep contact with and warm interest in the
lives of former students, while remaining an involved and concerned
family man—I will never know! But he did. And he never seemed harried or rushed, but always contemplative.

I visited with the Ladds on their farm outside Iowa City shortly before his death. The farmhouse was comfortable and rustic, with the memorabilia of a lifetime in its country style rooms that included a well-booked study for Mason.

Mason's fourth great love in life, after Mrs. Ladd, his family, and the law, was his orchard, particularly the numerous apple trees of various kinds, which he insisted we wander through, though he had a limp by this time that made it quite difficult for him. We sampled the different varieties of apples, which he explained in gentle detail. There was a farmer's respect for nature: the weather, the sky, the earth. It suddenly hit me what a connection there was between his life of teaching and writing, and his beloved apple orchard. His ideas, planted for so many years in succeeding generations of students and readers during his long and full life, have borne and will continue to bear important fruit. There are legions of Mason Ladd disciples everywhere—in law practice, in business, in government—who will shape things for years to come. I am constantly amazed, as I speak and travel across the country, at the number of people who, upon learning that I knew him, have a fond story to tell of what "the Dean" has meant to their personal and intellectual lives. And I think of his apple trees.