

1996

A Tribute to Jerry Israel: A Friend with a Messy Office

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Recommended Citation

Debra A. Livingston, *A Tribute to Jerry Israel: A Friend with a Messy Office*, 94 MICH. L. REV. 2429 (1996).
Available at: https://scholarship.law.columbia.edu/faculty_scholarship/3630

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TRIBUTE TO JERRY ISRAEL

*Jeffrey S. Lehman**

My legal education began with Jerry Israel.

During the fall of 1977, I was assigned to his section of Criminal Law. From the very first day of class, Jerry made it clear to us that the problems of crime and punishment were at once profoundly important and elusively difficult. Jerry taught from judicial opinions in the classic Socratic mode. Each day we were forced to grapple with the perplexing manner in which the language of precedent, so comforting when first encountered in the frame of an opinion, turned to quicksilver when tested against new cases, real or hypothetical.

We spent our first few weeks on the grisly subject of late-term feticide, attempting to decide what we should think of a legal system that chose to treat it as a different sort of crime than infanticide. We then moved on to a comprehensive stroll through the full landscape of criminalized conduct. Jerry never attempted to offer us a unified field theory. Rather, his mission was only to show us that any authority we might seek to invoke, even the Model Penal Code, could be made to wilt under sustained and rigorous critique. By the end of the semester our band of ninety students — a group that had entered brimming with the hubris of moral certainty about criminal conduct — emerged with a surprising dose of intellectual humility, sensitized to the paradoxes that attend our collective effort to establish a morally defensible system of state-imposed punishment for the activities we choose to deem criminal.

One of the great bits of wisdom passed down from generation to generation of Michigan students concerned Jerry's impossibly difficult final exams. He did not disappoint us. According to the custom of the day, final examinations were typeset, and our criminal law exam could easily have stood upright on a bookshelf. While we were given four hours, we could easily have used twelve. Indeed, few sensations from my past have survived as vividly as the mounting panic I endured just reading through the first question. It was an extended hypothetical where a hypnotically induced, staged assault on the hypnotist's spouse was the prelude to guilt-driven revenge and the shooting of an innocent

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bystander. To this day the story remains imprinted in my mind as the ultimate demonstration of how our intuitions about moral and criminal responsibility crumble in the face of sociological complexity.

As students we knew little of Jerry's contributions as a scholar. We knew that he and his close friend Yale Kamisar disagreed passionately about criminal procedure. But it was not until I returned to join the faculty in 1987 that I came to appreciate the depth of Jerry's scholarly commitment and attainment.

Jerry had come to teach at Michigan directly from a clerkship with Potter Stewart. And after some early flirtations with subjects ranging from reapportionment to free speech, he settled down to devote himself to the study of criminal law and procedure for which he is revered. His casebooks and treatises, coauthored with Kamisar and Wayne LaFave, have given intellectual structure and momentum to the field. His articles and books have illuminated problems ranging from juvenile obscenity, to search and seizure, to white collar crime. His legislative work as a Reporter for the Uniform Rules of Criminal Procedure and for the state of Michigan have given his insights the force of law.

Making the transition from student to colleague also permitted me to see another side of Jerry that students can only glimpse: his warmth and his wit. Jerry is not a backslapper. He is, however, a wonderful mentor to junior colleagues, and he knows how to laugh at himself and others.

Over a thirty-five year span, thousands of Michigan students like me began their legal education with Jerry Israel. Many times that number have come to know his exceptional mind by reading his scholarship. Our faculty continues to consider him a role model of dedication to the scholarly craft. The Law Review brings distinction to itself and to our Law School by dedicating this issue to his honor.