

EVIDENCE

on OHLBAUM

By Mark C. Franek

I tramp a perpetual journey, (come listen all!)
My signs are a rain-proof coat, good shoes, and a staff cut from the woods,
No friend of mine takes his ease in my chair, [. . .]
I lead no man to a dinner-table, library, exchange,
But each man and each woman of you I lead upon a knoll,
My left hand hooking you round the waist,
My right hand pointing to landscapes of continents and the public road.
Not I, not any one else can travel that road for you,
You must travel it for yourself.

—Walt Whitman, from *Song of Myself*

Professor Edward D. “Eddie” Ohlbaum – beloved teacher, coach, writer, scholar, mentor, advocate, friend – passed away in March of this year at the age of 64 after a battle with kidney cancer that he managed to shield from all but family and a few colleagues. All who came to know Eddie through his teaching and coaching came to respect him, many to love him. Over Eddie’s nearly 30 years at Temple University Beasley School of Law, thousands of students (including the author and contributor of this piece) took one of his classes to learn how to use the rules of evidence. And learn we did. We learned how to use the rules as a sword, or a shield, as the case may be. We learned about the power of wit and language; the importance of enthusiasm and integrity; and the joy inherent in the perpetual pursuit of self-improvement and excellence. We learned how to be better advocates, and, in the process, we learned how to be better people.



We arrived at his classroom door as bright-eyed 2Ls confronting evidentiary issues for the first time; as students in the Trial Advocacy Program, a paragon of the melding of theory and technique that arguably catapulted Temple Law into the national limelight; as seasoned road warriors in National Trial Team, a group he personally molded and willed to five national championships and 27 regional championships; and as veteran trial attorneys returning to sip once more at the Pierian Spring, pursuing an LL.M. in Trial Advocacy. Regardless of the program or time of day (morning, afternoon or night), we were punctiliously greeted with Eddie's natty goatee, his well-worn jeans, and, since about 2002, his earring. This was Eddie's ensemble – a perfect counterpoint to his wry unforgettable smile and that twinkle in the eye. He rarely conducted class from a podium. He did not need a pedestal or a soapbox. Instead, he crisscrossed the stage, wheedling and cajoling each of us by name (after the first week of class), teaching us to use the rules of evidence as tools to tell a story.

Through us, his teaching continues to touch clients and colleagues. We are scattered far and wide, literally around the globe. We are clear and convincing evidence of Ohlbaum's enduring legacy.

A native of New Rochelle, N.Y., and the son of a lawyer, Eddie excelled in high school and earned his undergraduate degree at Wesleyan University in 1972. He also earned a Master's Degree in Religion from Wesleyan in 1973. He went on to earn his J.D. in 1976 from Temple, the institution to which he would devote the majority of his professional career. Eddie took two constitutional law classes as a 1L. One class he took for credit from a good professor; the other he audited so he could learn twice as much. Eddie was a lifelong learner, a voracious reader and a good athlete. He assembled a massive home library. He became an accomplished tennis player and a seasoned baseball player, both endeavors he pursued past his 60th birthday. Eddie adored his son Jake, today a junior at the Berklee School of Music. It gave Eddie the greatest pleasure to travel to watch Jake perform. Eddie was totally devoted to his family, and a tireless "Brooklyn" Dodgers fan. Forgive us these upcoming Eddie-isms in italics, but *What's that got to do with the price of onions?* Context, Eddie, context. Just as you taught us: *You gotta set the table.*

After law school, Eddie honed his trial skills at the Defender Association for about seven years, where he almost never lost a case. He tried about 75 jury trials involving major felonies and hundreds of non-jury trials. He was often assigned to the toughest cases, and he earned accolades from prosecutors as well as judges. He was an exceptionally gifted trial attorney. For a big trial, it would not be uncommon for him to sleep only a few hours a night and lose 10 to 15 pounds. He hated to lose as much as he loved to win, a fierce competitive spirit that would later drive his efforts, year after year, with the fortunate members of Trial Team. During his public defender years,

Eddie's courtroom battlefields were littered with examples of his evidentiary victories and his sense of humor. He reportedly remarked to one saturnine judge: *Your Honor, my client is guilty only of aggravated stupidity.*

Eddie met his wife, Karyn Scher, four days after her 30th birthday, on Dec. 7, 1984. They were both coming out of serious relationships (Eddie, a first marriage), and they were introduced by one of Eddie's law school classmates, Ben Lipman. Karyn recalls that Eddie did not endear himself initially. "He challenged my career as a psychologist. In our first conversation, he made fun of Rorschach inkblots, and I was thinking, 'who is this guy wisecracking like this, making me defend my field?'" Later that evening, Eddie redeemed himself when he asked Karyn to dance. "Eddie was a very good dancer." As the night wore on, he had Karyn and the remaining guests in stitches, inspired by a marathon comedy routine and maybe too much wine. "His humor and his brains won me over," recalls Karyn.

The next Saturday night, Eddie cooked Karyn a seven-course Chinese meal, based on a cooking class he had just completed. But Karyn was reluctant to meet him solo on a Saturday night for their first date. Eddie was relentless. *How 'bout we put out the Wednesday newspapers and you'll think it's a Wednesday?* Eddie always had a way with words and was very passionate about what he was doing in life. That energy and enthusiasm infused just about everything he did. Eddie and Karyn were married in 1990. Eddie was fiercely loyal to Karyn, defending her not only in casual conversation, but in the courtroom. In a legal skirmish involving a sizeable ticket for speeding in a school zone, Eddie stayed up late, employing his usual compulsive diligence, researching the configuration of the signage, the time of day and sun glare, distances between the sign, the corner and Karyn's car – which ultimately caused the case to be

thrown out. He liked to joke (and it was true) that when he presented the facts, *the judge looked at the traffic cop and said, "I think he's got us!"*

After the Defender Association and a stint in Temple's Office of University Counsel, Eddie moved to full-time teaching, in 1985, where he would remain. Carl Singley, then-dean of Temple's Law school, wanted Eddie to build up what was then a very modest trial advocacy program. According to Robert Reinstein, former dean of the Law School and longtime friend, "Hiring Eddie was one of the best decisions that any dean of Temple Law School ever made. No one did more than Eddie Ohlbaum to make Temple a great law school." Dean JoAnne Epps, the current dean, remarks, "Eddie was a person of enormous integrity. That was his lodestar. He was incredibly smart, and he had the intellectual capacity to bring about the kinds of things he wanted to see. He also wanted to help people. There was no limit to what he would do on behalf of the people he was devoted to, whether his clients or his

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students.”

“His dedication to the school was phenomenal,” says David Sonenshein, friend and fellow law professor. “He was totally involved, always looking for ways to improve. I could say ‘irreplaceable,’ in the sense that I’ve never met anybody quite like him.”

Eddie propelled hundreds, if not thousands, of skilled attorneys into practice in Philadelphia and around the world. *You’re going to look good doing it.* One of Eddie’s first students in those early years was Mitchell S. Goldberg, now a federal judge in the United States District Court for the Eastern District of Pennsylvania. “I first became close with Eddie Ohlbaum in 1986, during my third year of law school, when he asked Andy Stern and me to serve as the first Temple Law School trial team. Back then, there were no tryouts, no ‘trial team boot camps’ or multiple trial teams with individual coaches, as there are now. We had little more than a few days to get ready.” The duo was a bit unprepared and outmatched, but advanced through more rounds than anyone expected. “When all was said and done, and we told Eddie the outcome, I thought I could actually see a light bulb go off in his head.” *And we’re off to the races.* Over the next three decades, Eddie, with help and support from a great number of others, built one of the top trial advocacy programs in the country, with the Trial Team as the jewel in the crown. Judge Goldberg reflects, “Eddie was the inventor, the general, and the genius behind it all.” Reinstein notes, “He brought the same passion, dedication, drive and brilliance to developing this program as he had to trying cases. It was Eddie who transformed the program into one of the best—if not the best—in the country.”

It is difficult to describe a typical class with Professor Ohlbaum. He was always appearing, suddenly, out of some law school corridor, like a better-looking Yoda. And each class was different. It did not matter whether the setting was a large lecture hall, a seminar room or the anteroom to his office, which he affectionately called his “shop.” During a lesson, he often jumped right into the rules, using prepared vignettes – or stories hewn

from recent headlines – to hammer home a point. The vignettes never got old. Students would inevitably change the facts and re-cast a question, “How would a court rule and why?” Eddie would work through the problem with the student, based on the new fact pattern, employing the Socratic method. He “danced” with the student and other students, as they entered the conversation, teasing out the problem and a court’s likely response. Sometimes Eddie would go off script, take a chance, utter something the dean would not want to hear. *.\$%@#! Thank God I have tenure!* Students often left



class with a deeper understanding of a particular rule of evidence, its nuances, and the power of proper technique. Yet when a bright student took a newly learned rule and bent or broke it, to get one past the judge, Eddie would say: *You’re better than that.*

Eddie taught integrity and his own brand of humility before the tribunal – he taught his students to be zealous but never a zealot. His mind, enthusiasm and eloquence drew out the best in his students. “Eddie treated us like adults. I felt as though I was his colleague, even though I was the student,” offers Brittne Walden, member of Trial Team

and recent Law School graduate. “If we had an opinion or a perspective that differed from his, he would hear us out. He would give us an opportunity to explain to him – to prove – why we were right and he was wrong.” “Eddie’s most beloved and often repeated lesson was that the goal of every advocate is to win the confidence of the court,” says Caroline Power, another recent graduate and member of Trial Team. “That meant always working to win the confidence of Eddie Ohlbaum. It wasn’t about a grade or a recommendation; it was about earning that look – arms crossed, leaning back, nodding his head with his eyebrows raised – the look that said, ‘not bad, Power. Not bad.’” For many more comments and anecdotes about Eddie, see the Law School’s tribute-blog at <http://www.law.temple.edu/SitePages/Ohlbaum-Tribute/default.aspx>, which contains, as of this writing, more than 100 accounts from students, former students and colleagues – the closest example of judicial notice outside of a courtroom. *Katy, bar the door!*

Eddie also found time to be a writer and a scholar. He wrote “Ohlbaum on the Pennsylvania Rules of Evidence,” an erudite treatise and favored guide for advocates and even judges. According to some very accomplished trial attorneys, Eddie Ohlbaum didn’t know *everything* about the rules of evidence and the calculus of courtroom decisions. Yet, when the judge and jury were out of the courtroom for recess, the tipstaff and court reporter (including the author of this tribute) would often spy the accomplished trial pro picking through a dog-eared copy of “Ohlbaum” at counsel’s table. “Professor Ohlbaum was responsible for planting the seeds of trial advocacy in the hearts of more trial lawyers than any other person in Philadelphia,” remarks Jerry Lehocky, immediate past president of the Pennsylvania Association for Justice (formerly Pennsylvania Trial Lawyers Association). “He has helped mold and shape the careers of some of the best trial lawyers this country has ever seen.” Nancy Winkler, immediate past president of the Philadelphia Trial Lawyers Association, mourns the loss and celebrates his legacy. “To honor Eddie’s memory, the Association will

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be dedicating one of its luncheon lectures each year and naming it ‘The Eddie Ohlbaum Trial Advocacy Lecture.’”

Eddie was a trusted resource for many judges. “His training sessions were always alive and full of crazy fact patterns, and the judges never wanted to miss it,” recalls Judge Annette M. Rizzo, of the Philadelphia Court of Common Pleas. “He really understood the complexities of adjudicating thorny issues. He was enlightening, instructive, entertaining and, well, just plain Eddie.” “Eddie was a friend and an occasional sounding board,” offers Judge Teresa Sarmina, also with the Court of Common Pleas. “I still can’t believe he’s gone.”

“Along with Phil Restrepo and Mitch Goldberg, I had the privilege of spending a few hours with Eddie two days before he died. He was in his office – working as usual,” recalls Timothy Rice, magistrate judge for the United States District Court for the Eastern District of Pennsylvania. “Watching over him were hundreds of students from the mock trial program, each depicted in a framed photograph on his wall. These were the kids raised in the trial program he birthed nearly 30 years ago. One by one, Eddie regaled us with their stories.” Eddie’s wife, Karyn, would say that Eddie “kvelled” (Yiddish for expressing great joy and happiness – like for a child) over his students who went on to accomplish great things. Nothing gave Eddie more pleasure than to witness and help his deserving students along the road to a flowering career.

Outside the love of family, there is nothing in this world more satisfying and lasting than the love and respect of a great teacher. Eddie taught not just rules, or rules about the rules; he

taught rhyme and rhythm and technique, and he had fun doing it. *Ippity boppity boop!* He taught character and charisma, integrity and generosity of spirit. These lessons were no mere shadows on his classroom wall. Eddie was committed to the Support Center for Child Advocates, the Pennsylvania Innocence Project, and his synagogue, Beth Am Israel – whole swaths of life and human connection unexplored here. He fought for the underdogs throughout his professional career. As a teacher, he helped generations of students to become “bold swimmers.” We forgive him his occasional annoying habits and swagger. We pine for just one more class, one more conversation, one more argument with the Professor:

You are also asking me questions and I hear you,

I answer that I cannot answer, you must find out for yourself. [. . .] You must habit yourself to the dazzle of the light and of every moment of your life.

Long have you timidly waded holding a plank by the shore,

Now I will you to be a bold swimmer,

To jump off in the midst of the sea, rise again, nod to me, shout, and laughingly dash with your hair.

—Walt Whitman, from *Song of Myself* ■

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