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The Landau Look: A Clerk's-Eye View

Generally, clerks don't go behind the bench.¹ But there's one day of the year when the Oregon Supreme Court clerks take their turn—each in their justice's chair, doing the best judicial impression they can muster for the annual group photo.² While clerking for Justice Landau, I had two opportunities to perfect my impression.

Justice Landau is inimitable in many ways, but at least one image can be approximated. Anyone who has watched him at oral argument knows the “Landau Look.” An attorney at the podium makes an assertion; Justice Landau leans back in his chair, consults his iPad or statute book, and then fixes the attorney with a skeptical look over the top of his glasses. The attorney swallows, takes a deep breath, and tries to remember exactly what they just said to prompt that look.

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¹ The chief exception is the clerk's duty to give tours of the Oregon Supreme Court; in that case, a clerk may shepherd schoolchildren behind the bench to show them the inscribed drawers and ensure that they don't accidentally (or intentionally) press the alarm button and summon the marshals.

² I have adopted the singular “they” for this essay because it is both more inclusive and more flexible. Though it is not yet fully accepted in common legal usage, it is becoming increasingly acceptable in popular usage. BRYAN A. GARNER, *GARNER'S MODERN ENGLISH USAGE* 822 (4th ed. 2016) (“Though the masculine singular personal pronoun may survive awhile longer as a generic term, it will probably be ultimately displaced by *they*, which is coming to be used alternatively as singular or plural.”). Singular “they” also has longstanding historical precedent. *See generally* Robert D. Eagleson, *A Singular Use of They*, 5 *SCRIBES J. OF LEGAL WRITING* 87, 89 (1994–1995) (noting usage dating back to the fourteenth century). I understand that Justice Landau has come to accept the singular “they.”

The Look is not necessarily a sign of impending disaster. Rather, it means that Justice Landau is curious, prepared to be convinced—though it may take some serious convincing. Most advocates receive that look only in court; as his clerk, I was on the receiving end so frequently that I knew exactly what to do for my group photo impression.

Of course, for a clerk, there are variants of the Landau Look—though few as portentous as that in oral argument. Our regular games of Boggle,³ for example, involved a particularly suspicious version of the Look and loud expressions of skepticism on both sides; on his part, when I'd try neologisms, and on my part, when he claimed that a certain word meant a small North American bird, or a unit of currency in ancient Rome, or a bit of Scottish slang, or a type of lava.⁴ He was almost always right.⁵

In reading draft opinions and recommendations on petitions for review, Justice Landau displayed another version of the Look, one that invited explanation of everything from my analytical approach to my word choice. Despite his keen and near-encyclopedic knowledge of Oregon law—complete with the ability to summon a relevant hundred-year-old case citation out of the ether—Justice Landau was always open to other ways of looking at the law (and other dictionaries to consult). Even when he found my recommendation that the court allow a petition for review to be questionable at best, there always followed a discussion, not a demand. And he never spared his own opinions the challenge of that Look, scrutinizing them for analytical flaws and welcoming criticism.

That open invitation to discussion is Justice Landau's hallmark. A quarter-century's worth of his clerks will recall the morning meeting, a daily ritual involving discussion that lasted anywhere from fifteen minutes to an hour and ranged from law (always) to food (usually) to books (often) to music, movies, and politics (sometimes). No matter the topic, Justice Landau had read at least two articles and possibly a book about it, and he always had something informed and thought-

³ A word-finding game that requires players to identify words of at least three letters that appear contiguously on a square board with randomly rolled letter cubes. The official rules give players three minutes to write down as many words as they can find, after which players compare their lists of words and assign points for any words that the other player has not written down. Our modified version of the rules required four-letter (or longer) words, and we searched for words until one of us cried uncle.

⁴ We still play Boggle by email, but the effectiveness of the Look is diminished significantly.

⁵ Alternate title of this essay.

provoking to say. I learned quickly (thanks to the advice of previous clerks) that I should always bring a notepad with me. At the beginning of my clerkship, Justice Landau came into my office and handed me three small beanbags so that I could learn to juggle; he claimed this would be relaxing, demonstrated how to juggle three bags, and regaled me with stories of local chainsaw jugglers.⁶ A citation in a draft opinion to a single historical journal article or old edition of a dictionary might turn into a week's worth of discussion and emails, before growing into an overview of hundreds of years of history in the final version—or disappearing entirely, discarded as something fascinating to us but entirely unnecessary to an opinion.⁷ An email using a colloquial phrase—memorably, “take it with a grain of salt” or “pin down”—might prompt email endnotes with links to online etymology sites.⁸ No subject was too small to merit further exploration.

Justice Landau's intellectual curiosity is not only all-encompassing, it is infectious. As a mentor, he nurtures that curiosity in everyone he talks to,⁹ encouraging debate while still accomplishing a truly prodigious amount of work.¹⁰ His interest in dictionaries inspired me to embark on my own dictionary project.¹¹ Justice Landau's statutory interpretation outline has been a hotly sought-after commodity since its first edition, and its publication in this law review is a welcome treat for the Oregon legal community.

The Oregon courts enjoy an abundance of open, thoughtful, and hardworking judges, and I had the good fortune to clerk for a judge who wholeheartedly embodies those qualities. The Landau Look has meant intellectual challenge for a generation of appellate clerks,

⁶ The relaxation part didn't really work out. My unlucky officemates were forced to listen to many sessions of me throwing and catching a single beanbag three or four times in a row before I dropped it—the pinnacle of my juggling achievement. Justice Landau, of course, is an excellent juggler.

⁷ I promise, it happened at least once.

⁸ Yes, despite Justice Landau's aversion to footnotes, occasionally I was able to slip an endnote into an email, leading him to respond in kind. I believe we established that to “pin down” is less committal than “nail down,” at least.

⁹ But not in “mentees” because, as Justice Landau is quick to point out, the word “mentor” comes from Mentor, whom Athena impersonates to guide Telemachus in *The Odyssey*, not from a verb “to ment.” Thus, “mentee” is blasphemy. Bryan Garner agrees. Garner, *supra* note 2, at 589.

¹⁰ As his many students know, the first five months of Justice Landau's “retirement” involved teaching at all three Oregon law schools, using a textbook that he compiled himself.

¹¹ Nora Coon, *162 Years of Dictionary Use in the Oregon Appellate Courts*, 55 WILLAMETTE L. REV. (forthcoming 2019).

counsel, and colleagues. It will continue to do so for everyone who has the pleasure of speaking with Justice Landau in the future.