

HON. RICK HASELTON*

Eulogy for Landau

My friend Jack and I go back a long way: back to 1983, when, coming off his clerkship with Judge Belloni, he joined our old firm, the original, inimitable, Lindsay Hart Neil & Weigler. We were young associates, and then partners, together until Jack followed Dave Frohnmayer’s siren song to the Oregon Department of Justice. In 1994, we were reunited when I came to the Oregon Court of Appeals, to which Jack had been appointed the year before. We served together there, including as presiding judges (Jack of “Blue” department; I, of “Pink”), for nearly seventeen years until Jack was elected to the Oregon Supreme Court. In total, we served concurrently as appellate judges for almost twenty-two years.

Thus, the “black letter” of a joint judicial résumé. But, of course, there is so much more—transcending even the shared triumphs and disappointments, the frustrations and fulfillment, of the work of judges. And now, he has retired. So, this: *Eulogy for Landau*.

I know it sounds macabre—“I come to praise, not to bury, Jack”—but there are at least two (arguably) good reasons for proceeding in this way: First, when Jack dies, G-d willing many years from now, who knows whether I’ll still be around—and this way he’s assured of hearing what I’d have to say.

And second? Well, the second reason is grounded in the wisdom of our old senior partner, Dennis Lindsay. After I had been on the Court of Appeals for a couple of years, leaving for Salem early and coming home late, Dennis came down for a chat. We talked about a lot of silliness, and then he said, “So, how much time are you spending with

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the family?” When I answered by talking about our work and our caseload, he cut me off, gestured at all the volumes on the bookshelves that line our chambers, and said, “When you die, do you think that they are going to mourn you or remember you? Do you really think that anyone’s going to read that [expletive] fifty years from now?”

It may well be that when Jack passes to his ultimate reward there will be those who will pay their respects because of his judicial brilliance and matchless craftsmanship. But the reason that that church or cemetery—or Kitchen Stadium—will be packed, the reason we will most mourn his loss, and celebrate his life, will be because of the man Jack is.

For many of us who know, and love, Jack, the first quality that comes to mind—at least until we think more on it—is his insatiable curiosity. He is interested in, fascinated by, everything: books, ideas, food, music, cinema, physics, lexicology, numismatics, history—and, yes, law. He combines the wide-eyed wonder of Sherman with the sagacity of Mr. Peabody.

With the possible exception of the justice whom he succeeded, Jack is the most widely read person I’ve ever known. Everything from Berthold Brecht to bawdy Bartle Bull (with his albino rhinoceroses and White Russians¹), Julia Child to Justinian, Rabelais to Rumpole. And Calvino to Caligula to . . . *Ciancanelli*.² (Well, maybe that isn’t such a stretch) He can speak with equal facility about Guido Calabresi, Calabrian calamari, or John Calipari.

I would not presume to talk about Jack and music—my own knowledge begins and ends (as it should) with Petula Clark. I only know that he was a member of a band a lifetime ago and plays the guitar assiduously—and maybe even well.

But food! Jack will, on the slightest provocation—or no provocation at all—favor you with a detailed (some might say excruciating) description of the provenance of the marzipan mushrooms on a *bûche de Noel* or a dissertation on the comparative merits of wind-powered pasta makers.

Everyone who knows Jack has at least one food story—whether it’s of Jack directing his colleagues as sous chefs at a Court of Appeals retreat in the snow at Sunriver, or of Jack and his wife, Diane, cooking

¹ *E.g.*, BARTLE BULL, THE WHITE RHINO HOTEL (1992); BARTLE BULL, A CAFÉ ON THE NILE (1998).

² *State v. Ciancanelli*, 181 Or. App. 1, 45 P.3d 451 (2002) (en banc), *aff’d in part, rev’d in part*, 339 Or. 282, 161 P.3d 613 (2005).

doubleheader Thanksgiving and Christmas dinners that would humble James Beard, or of Jack lugging an iron skillet—it’s gotten heavier with each retelling as the years pass—into the wilderness to be able to fry up the bacon for spaghetti alla carbonara on a three-day hike. My own favorite food story is Jack sweeping the Lindsay Hart firm bake-off year after year, which did little to enhance his partnership prospects in some quarters (He is, by the way, very competitive—poker, Scrabble, racquetball, computer games (something called “Civilization”)—he hates to lose.)

And then, there is his fascination—some might say his obsession—with footnotes. Jack is a self-professed footnote-phobe, even publishing an article on the subject.³ And yet, how are we to explain why this supposed scourge of subscript included 319 footnotes (including roughly 100 “*id.s*”) in his original sixty-eight-page article on Oregon statutory construction,⁴ yielding a 4.70 FDF (that’s “footnote density factor” for those of you keeping score at home)—and, in his contribution to this *Oregon Law Review* issue has planted more than 800 footnotes in a mere 159 pages?

The answer, I think, lies in another of Jack’s attributes: he can be a bit of a show-off. I quote: “The roots of traditional wildlife run deeper even than that. Animal rights scholars, for example, point out that the Roman conception of property rights in nonhuman animals has its genesis in ancient Hebrew and Greek anthropocentric world views.”⁵ Or this:

Justinian’s Digest consists of excerpts from existing legal literature collected by a commission of scholars and practitioners into 50 books, themselves divided into titles according to subject. Justinian’s Institutes was an elementary text book of Roman law prepared by three scholars. Although posterity credits him with both works, the Roman Emperor Justinian actually wrote neither of them. A Roman jurist, Tribonian, did most of the work.⁶

Really??

So what fuels all of this? Jack’s incredible energy—he’s tireless, he’s indefatigable, he’s *exhausting*. Judging, writing, teaching—being

³ Jack L. Landau, *Footnote Folly*, 67 OR. ST. BAR BULL., Nov. 2006, at 19.

⁴ Jack L. Landau, *Some Observations About Statutory Construction in Oregon*, 32 WILLAMETTE L. REV. 1 (1996).

⁵ *State v. Couch*, 196 Or. App. 665, 674 n.3, 103 P.3d 671, 676, n.3 (2004) (citing Steven Wise, *How Nonhuman Animals Were Trapped in a Nonexistent Universe*, 1 ANIMAL L. 15, 18–33 (1995)).

⁶ *Id.* at 674, n.4, 103 P.3d at 676, n.4 (citing BARRY NICHOLAS, AN INTRODUCTION TO ROMAN LAW 38–48 (1962)).

a husband and father—the next Michael Symon or Phil Ivey. By the way, I understand that he’s now learning Hebrew—what’s next? Kosher catering? Rabbinic school? One of his former clerks speaks for all of us: “I both looked forward to, and dreaded, coming in on Monday morning—I’d be exhausted just listening to what Jack did over the weekend”

It may well be exhausting—it *is* exhausting—but it’s also so much fun. How can I describe Jack’s sense of humor? Quick—incredibly quick (like an Ali jab or Cole Porter lyric)—impish, puckish, wicked? Probably best described as a cross between Oscar Wilde and Bart Simpson. He *loves Family Guy* and still can’t get over the Dead Parrot sketch in *Monty Python*. He wrote the associate Christmas skits at the old firm, including one (concocted over a “working lunch” of hot turkey sandwiches and Spanish coffees at Huber’s) in which we both appeared in animal skins—he was Conan the Barbarian (and look what became of Conan . . .). In one of Jack’s law review pieces, he included a prefatory disclaimer: “No law clerks were mistreated in the preparation of this article.”⁷ And he was always the prime suspect when “anonymous” satirical opinions surfaced (usually around April 1) on the Court of Appeals—heaven knows that we all could use a couple of those these days

But my favorite Jack humor story—which wasn’t so funny at the time—occurred when we sat together for argument now close to twenty years ago. Jack asked a perfectly reasonable, and characteristically penetrating, question, and the lawyer huffed in response, “Only someone who spent the last ten years in the library would have asked that question.” Some judges (and I’m one) would have filleted, spitted, and slow-roasted the lawyer on the spot. Jack merely peered over his glasses and said, “I must get out more”

For me, that’s quintessential Jack, my colleague and beloved friend. The quickness—coupled with kindness.

One of Jack’s dearest friends may have captured it best: “I guess what I’d say is that he works hard at a lot of things—writing opinions and legal articles, cooking, hiking, whitewater rafting—but he makes it all look easy. One could dislike him for that, but he is so unassuming, you only like him more for it.”

I understand that there is an Italian Renaissance term for that quality (I think Jack would like this): “*Sprezzatura*.” In its best sense, meaning,

⁷ Jack L. Landau, *The Intended Meaning of “Legislative Intent” and Its Implications for Statutory Construction in Oregon*, 76 OR. L. REV. 47 (1997).

the quality of a prince or gentleman, the ability to do many things well without apparent effort.⁸ Perhaps the closest, albeit inexact, English equivalent is “grace.”

For nearly forty years, I—and so many others—have been blessed to share the grace of Jack Landau. The grace of a man who, for all those dazzling, dizzying, variegated interests, loves his family best. A true Family Guy. To speak of it publicly—of his sons Aaron and Nathan, and Diane (and the grandchildren)—but anyone who knows Jack knows exactly what I mean.

The grace of a man who can do it all himself but somehow makes the rest of us feel truly valued and special.

The grace of a colleague who inspires us all by his fearless pursuit of the truth.

The grace of a friend who not once in nearly twenty-two years together on the bench was ever too busy or impatient to listen to a friend and colleague who habitually arrived at his door unannounced, wrestling with an intractable legal question or needing to unburden himself about some personal crisis—or simply musing on the genealogy of Chef Boyardee.

Jack, you are a superb judge—but, so much more, you are a *mensch*. A person of boundless generosity of spirit. Like one of those ancient coins you cherish, you are true, constant, and beyond value. All of us who love you applaud *Oregon Law Review* and rejoice in this tribute.

⁸ See Baldassare Castiglione, *The Book of the Courtier*, WIKIPEDIA (accessed February 16, 2019), https://en.wikipedia.org/wiki/The_Book_of_the_Courtier (noting *The Book of the Courtier* was first published in 1528).

