Buffalo Law Review

Volume 55 | Number 1 Article 9

5-1-2007

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Recommended Citation

Dianne Bennett, *Remembering Louis Del Cotto*, 55 Buff. L. Rev. 383 (2007).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol55/iss1/9

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Remembering Louis Del Cotto

DIANNE BENNETT†

He was a tall man, dressed in a dark suit, white shirt, tie, angular features, deep-set Italian eyes, piercing into our fear. No doubt we, the seemingly experienced law school sophomores in the Class of 1975, might even have visibly quaked. At least we all remember being afraid of Tax A, as the introductory required tax course at SUNY at Buffalo Law School then was called. And we feared it even more, because we were taking the course from the person reputed to be the most challenging of professors, Lou Del Cotto. What we soon learned was that Lou Del Cotto was the consummate teacher.

One might be able to measure Lou's success as a tax teacher statistically. It seems to us who went on to practice tax law that the number of tax practitioners produced by Lou, and Lou and Ken Joyce[1] together, is extraordinarily high. We never intended to be tax lawyers, say most of us who are tax practitioners today; it was all Lou's doing. But we do not have those statistics, so the anecdotal evidence must suffice.

Partly because of Lou's uniqueness, I knew when I was asked to write a piece about Lou in this tribute issue of the *Buffalo Law Review*, I could not do it alone. The Class of '75

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1. Ken Joyce—who also has written a tribute piece in this issue—was mentored by Lou, and became one of University at Buffalo Law School's most honored teachers himself.

seemed to me an unusual class, and I called on three of my fellow classmates—all tax lawyers more than thirty years later—to help figure out just what made Lou, and perhaps our class's relationship to him, unusual. In the 1970s, Tax A was a required course, normally taken in the second year. We were sophomores when the Class of 1975 ventured onto SUNY at Buffalo's North Campus, becoming in 1973 the first students to take classes in the first—and only—building on that campus (for me, driving in from Fredonia, it seemed more like Siberia than Buffalo). We were the last of the small law classes, numbering fewer than 170. So, with eighty-plus of us to a tax section, we sat on the carpeted tiers of one of the new, and as yet unfurnished, O'Brian Hall classrooms, at best wary of Tax A. Wary, because Tax A was rumored to be difficult, and getting assigned to Professor Del Cotto's class seemed to be drawing the short straw. That's the recollection of four of us who were there: with me, Richard F. Campbell, my partner in the Tax Department at Hodgson Russ LLP in Buffalo for over thirty years; Barbara D. Klippert, now a partner at the preeminent tax law firm in New York City, McKee Nelson LLP; and Timothy Cotter, who remains at the Internal Revenue Service Chief Counsel's Office in Buffalo after his more than thirty-year career with the IRS in Washington, D.C. and Buffalo.

Even with us students of the 1970s, with our jeans and long hair and long jewelry to match, sprawled on the colored carpets, Lou kept his formality. The generation gap was heightened by the times and intensified by Lou's personality. He not only looked formal and imposing, he addressed us by our last names ("Mr. Campbell," "Mr. Cotter," "Mrs. Barth" (Barbara had another last name), "Mrs. Graebner" (so did I)), and I am sure we shook when he called on us. As Klippert now recalls, "I was scared to death of taking tax."[2] Lou emanated earnestness, seriousness. He leaned his tall frame forward from the bottom of that pitched, large classroom, and honed in on the student who was the focus of his modified (even if it did not seem so at the time) Socratic method. "If you didn't learn, he took it personally," is the way Campbell describes it; Lou certainly made you feel that. Klippert contrasts his

2. Cheryl D. Block, a professor of tax for more than twenty years, describes some of this same fear in her tribute piece in this issue.

teaching style to those teachers she had then and since who don't seem to care if the class is over your head. Surely, you knew, Lou cared. "He demanded no more of his students than of himself," says Cotter. Of course, that is saying a lot. Cotter remembers Lou telling him long after our days in his tax classes that he would tear up his notes after the end of each year and start over again the next year, because, Lou told Cotter, he learned more from the students each year and wanted to reflect that experience. "Imagine," says Cotter, "that from a guy who had it all in his head." This story may be apocryphal, and Ken Joyce may know the truth, but I preferred not to check it. Even if apocryphal, the story illuminates Lou. Klippert also recalls some of us talking to Lou outside of class one day. Lou, according to Klippert, said that—as much as we were scared of him—he was scared of us. "Don't you remember that?" she asked me, "That was amazing to me." Now that I reflect on this, his own anxiety must have been part of what made his teaching great. Each class was a challenge to him, a challenge to communicate to us, his students, and an opportunity for him to learn from us, but learn in a manner that was not at all comfortable, it appears.

Inside all that earnestness (and apparently anxiety) clearly was passion. As Cotter puts it: "passion combined with effort." Lou did not make what he did seem easy. What these stories illustrate is the ways in which Lou "struggled with us," to use Klippert's language. "We were always working with him in figuring out those concepts," she said. With Lou, the students were working together with him to solve tax problems. And that may be a hallmark of a great teacher: one who makes you feel you and he are in the game together.

Dick Campbell and I recall taking Tax A because we were required to do so; Tax B, because we liked Tax A; Tax C (Corporate Tax) because we liked Tax B; and Tax D (Corporate Reorganizations), because we liked Tax C. Almost twenty students, a record number as I recall, ended up in that fourth tax course from our small Class of '75. As the luck of the draw had it, we had all those courses with Professor Del Cotto.[3]

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3. I sometimes joked with Ken Joyce that he was the best tax teacher I never had for tax.

Given that the four of us, along with dozens of others, became tax lawyers, there had to be more to Lou's teaching than his passion. He had to convince us of his regard for, and the worthiness of, the subject. I know that tax sometimes is considered on a lower rung of the law school curriculum. Some would say it is technical, it is black letter law, it is not conceptual, it is not socially relevant. Perhaps Lou's greatest lesson to us was putting the lie to this trivialization of tax law. Lou taught us to regard tax law as a high form of the social-compact in at least three ways: he taught us to look for what is right, to understand the basic concepts in ways few can imagine, and to appreciate beautiful writing.

In our years at Hodgson Russ, Dick Campbell and I, who both like to say we are joined at the hip, often would bat around ways of solving problems for clients, and always would say, "Well, this is the *right* answer; now what does the Code say?" Lou taught us that, and Don Lubick[4] never let us forget it. As students, before we even looked at what the law was, recalls Campbell, Lou made us look for the right answer (without hammering us over the head with what later would be called political correctness). There are too many rules in tax law to learn them, as Campbell notes; you cannot just learn the rules and be a good tax lawyer. You have to understand what the answer *should* be. As I think back now, what is the right answer, how do we know what the answer should be? Part of what Lou taught us, and that remains part of our analytical skills today, is finding the right answer from the perspective of logic. If you parse the basic principles, and if you understand those principles, then you can ascertain what the answer should be. People may disagree over whether taxation should be progressive or not, how progressive it should be, or whether it should give incentives or not. But, one can analyze a particular statute in terms of whether it serves a particular purpose well, properly, and efficiently. Lou taught us to look first at that correctness, and then to look for the Code answer (which more times than not is not the "right" answer, as we all know). In looking for the right answer,

4. Donald C. Lubick, who held the highest tax policy position in the Executive Branch under two U.S. Presidents, Carter and Clinton, notes in his tribute piece in this volume that at Hodgson Russ he hired many of Lou's students.

one also can understand the political influences in the tax law, in ways that are much more illuminating than simply being told those influences.

Both Cotter and Klippert reflected on how Lou taught them to think logically and read a statute. But, *how* did he do it, I asked, as I tried to recall myself. One way was his passion and collective effort, as noted above. Another was his desire to plumb the depths of even the most elemental concepts. Both in his teaching and in the articles Lou wrote with Ken Joyce, they took the most basic parts of the tax world and rigorously analyzed them—"The particle physicists of taxation," as Cotter aptly put it. If one understands those basic concepts, and builds through each level of a statute, one thinks logically and works towards the right answer (even if the statute is not written logically), and understands much more than any technician ever can.

Can one look for the right answer, think logically, and write beautifully at the same time? The answer for Lou had to be "yes." Klippert recalls Lou critiquing for her one of her answers in a blue book. The first two questions, he told her, your writing had flow to it, but in the third question, your writing just did not flow the way it did in the others. How many tax teachers are looking for "flow" in answers to tax questions? Lou did. I recall, in my paper on the scintillating (and now obsolete) topic of corporate earnings and profits in our Corporate Reorganizations class, I used an analogy, calling a solution a "band-aid on a bleeding wound." In the final draft, I took out this corny turn of phrase. Lou had not criticized this turn of phrase in the first draft, but he noticed I had removed it, and he gently let me know, after the fact, that taking out this cliché was the right thing to do. I also recall, working in a small study group, one of our group coming up with the phrase "contingent beneficiary waiting in the wings" to describe a tax pattern. I used that in an answer in my blue book, and Lou was enthralled with the concept of "waiting in the wings." Lou's delight with the phrase is what makes me remember it.[5] He loved the appropriate turn of phrase that made it easier for people to grasp the concept.

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5. I did let Lou know the phrase belonged to fellow classmate Joan Hollinger.

Lou showed us, in essence, the beauty of the tax law, based in its elemental structure. "A beautiful wholeness, beautifully integrated, simple principles that fit together if you grasped the basic concepts," to use Klippert's words.

As the other articles in this tribute issue demonstrate, Lou was not simply a teacher of tax law. His scholarly work is extensive, and his work with Ken Joyce is remarkable. The intellectual interplay between the two of them is something at which to marvel. You can see that interplay in their writings, which Ken describes in his piece in this issue. I also was fortunate to see it when they helped me teach Tax I (as it then had become) in the 1980s. I filled in for a couple years as the third introductory tax teacher. Lou and Ken each taught a section, and Bill Greiner had been teaching the third section, until he was called on to higher posts at SUNY at Buffalo. Lou and Ken showed me some of the backstage of their teaching. The care with which they approached each class should not have surprised me. They both gave an enormous amount of intellectual and moral support to each other. They are in many ways one of the great pairings of intellectual endeavor in the law.

As a student, I recall reading (even if Cheryl Block does not) at least a few of Lou's law review articles as part of our classes. Like Cotter, I remember them being "tough going." Lou was demanding of his readers. No sentence was easy; no basic tax principle simply assumed. Lou first published in the *Buffalo Law Review* in 1962, a procedural piece on the need for a Court of Tax Appeals.[6] From 1965 through 1969, he published six pieces in five years. *Property in the Capital Asset Definitions: Influence of "Fruit and Tree"*[7] is the most memorable for us of '75. The whole concept of "fruit and tree"—which was the capital asset and which was income (of course, and much, much more)—was so influential in our courses that, at the end of one semester, our class gave Lou a fruit tree. There is still some debate over whether it was a pear or an apple.

The generation gap, not so much in age but in culture, meant Lou had to acclimate to aspects of our class, including our casual dress. (I showed up for orientation in a

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6. Louis A. Del Cotto, *The Need for a Court of Tax Appeals: An Argument and Study*, 12 BUFF. L. REV. 5 (1962).

7. 15 BUFF. L. REV. 1 (1965).

skirted business suit, which, after seeing my fellow students in that August day of 1972, I never wore to school again.) I noted above Lou's formalism; contributing to that no doubt was his Italian heritage, which Dick Campbell and I both share and understand through our mothers. Lou also had to deal with feminism. The Class of '75 was the first class to have a significant number of women students. Many of us were nontraditional students—again, the beginning of what would become a trend—but we did not know that then. I had a one year-old child when I started at SUNY at Buffalo Law, and I had been out of college for seven years. Almost no one else had children, and certainly not young children (one of my fellow female students told me I should have waited until my kids were in school before I went to law school). It seemed like a generation had passed (as my suit on orientation day indicated). We need to remember it was novel for Lou to see all those female faces, and the zeal with which we pursued our studies. I recall as a student being in his office one day when he commented that the women students were really good; it was fairly clear we had surprised him. He never treated us any differently from the men, from what I could tell. But I know we took him a bit aback. Lou's wife, Beatrice, told me only recently that "Lou wasn't a modern man, you know, at home." He did not want Bea to go to Italy without him, and he did not want to go—so she could not go, she said. The end of that story is that she eventually did go, without him. And, quite early on in our law school careers, I think Lou learned to appreciate us, the female students.

To focus on Lou just as a tax teacher and scholar also misses much of the man, even to those of us who knew him almost solely as a teacher. His complexities as a person became apparent to us. Lou had a social side that was not obvious in the classroom. One of the places it emerged was at a few end-of-semester parties. Remember, these were parties in the 1970s. Lou was invited, and some were a bit nervous about his fitting in. But, he surprised us too. He was a guitarist, and played jazz (Lubick may remember classical, but I know jazz). He played at those student parties. And, one night, after the student days, following some event, Lou, Bea, my husband, Bill Graebner, and I ended up at the now defunct St. George's Table, in downtown Buffalo, listening to a jazz group Lou knew about, and dancing.

When the four of us from the Class of '75 reflect on Lou's contributions, we readily see how Lou changed our lives. He communicated to us his passion for the beauty of the tax law. He taught us to be caring of tax policy, to be entranced with basic principles, to be logical, and to be just darn good tax lawyers. We all regret that tax is no longer required at SUNY at Buffalo Law School, and that Lou is no longer teaching it. Lou's contributions were important to us all, in fact, indelible.

Yet, this is how I want to remember Lou Del Cotto: the world's best tax teacher dancing with Bea to a swinging jazz combo in a smoky downstairs club.