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One Less Note to Answer

JOHN HENRY SCHLEGEL†

Back in the 60s, back just after we and the West gave up writing on tanned hides, Burt Bacharach penned a One Less Bell to Answer song with lyrics that began like this:

One less bell to answer,
One less egg to fry,
One less man to pick up after,
I should be happy, but all I do is cry.¹

The metrics makes sense only with the music, but the thoughts speak of all kinds of love, except for perhaps agapē, and so to the disappearance of Jack Hyman from my life.

Ours was a love affair of the head, not of the heart, not an affair born of passion, but a growing affection that, while it never traveled through wild passion—Jack was not given to excess—over time grew into love. For all its thirty plus years duration, I never understood what Jack saw in me, but, I suppose that's true of all love affairs, requiring, as they do, a certain lack of ego and respect for the beloved for them to work. We never advertised our growing affection; there was no point in doing so as it was begun when Jack had already started to disengage from active involvement in the political life of the Law School. We never hid it either. So, let me put it to you directly. Jack was one of my wrestling partners, someone with whom I could wrestle about ideas.

Now this last statement is surely odd for Jack was a swimmer—as Richard Griffin makes clear—in fact, and in personality, someone who measures performance according to some internal standard where won or lost, or even how you played the game, was not the object of the activity. The object was doing something as well as one could. Jack always pushed me to think as well as I could, and in that

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1. FIFTH DIMENSION, One Less Bell to Answer, on PORTRAIT (Bell Records 1970).
way he tried to be, not just a wrestling partner, but a teacher too, as he, like most good teachers, could never stop teaching.

Jack cared about faculty as a good teacher would care about his students. My favorite story of his level of concern for we, the new kids at the Law School, who are now no longer new, is about my dear friend Jan Lindgren. In the late 70s, some brewer began selling beer in six ounce bottles. Jan likes a bit of alcohol with her occasional Spartan-French meals, and so she would bring one of these little bottles to the lunch that she ate with her office door open. That office was a few doors down from Jack’s and on that fact the story turns.

One day, when I was coming to see Jan, Jack called out to me to come into his office. He then told me to close the door, which, like Janet’s and mine, was always open when in the building. This was going to be a serious discussion. What had I done! Jack wasted no time. “Your friend Janet is having a beer with her lunch. Does she have a drinking problem?” I assured him that Janet had no such problem. He said, “Are you sure?” I assured him again that there was no such problem and left. A while later I told Janet the story, and we have laughed about it many a time since, but then, and up till this day, I have never repeated what Jack said to me next. “You will pay attention to this matter for me.” It was the only order Jack gave me. Even when already partly disengaged, he saw more and cared more about his colleagues than he let slip out.

It is odd for any teacher, even a caring teacher such as Jack, to find the most fun is to engage with essentially non-competitive minds. Teaching is a very competitive game where won and lost is constantly tooted up. I remember Allan Freeman regularly saying that he badgered his property students with, “You will learn your future interests!” And even Jack once remarked of a public official involved in local law enforcement, “Well that's someone whom I never succeeded in teaching any constitutional law to.” But Jack’s clean preference for intellectual companionship was for a kind of wrestling that requires company, but no opponent, or at least an incorporeal one. One might think appropriately of Jacob wrestling with the Angel. I am no angel, but I have long shared that preference, starting with my father and including two bosses and several friends. Perhaps it is the similarity of
attitude toward intellectual life that he saw in me so many years ago.

Jack always wanted to wrestle over procedural answers to questions of government. His policy preferences were at times quite fierce—preservation of the New Deal regulatory edifice was one and the 60s civil rights hopes (edifice they never became, a failure that brought out Jack's most combative instincts) was another. But with me, he was content to discuss his hope to discover a set of processes that would guarantee good outcomes. I, an eternal skeptic that such is possible, managed to shed my general hostility to process theories, an hostility that otherwise would have brought out scorn and vitriol, and would instead play along.

I used the word "play" quite carefully here. It is fun to play seriously with ideas. Jack loved to play with ideas. He played quite seriously. The fate of the Union might not had been at issue in our wrestling, but the good of the Commonwealth was. The playing was fun for him, as it was for me. The point was always improving each other's thought, improving ones wrist control, mastering the half nelson, even trying a double leg take down. Ours was an activity that each could engage in separately, but that somehow worked better together.

On my side I supplied whatever manuscript I was working on. Jack supplied short and long notes. By the time I knew him, he had lost the compulsion to write that is my personal drug addiction, though not before completion of his last major effort, a review of Gerald Gunther's Constitutional Law casebook. The piece was as quick a takedown at the end of a long match as any wrestler could wish for when Jack observed that the book, and inferentially most of the scholarship in the area, had refined the doctrine to the point that it was largely useless to the litigating lawyer.

Sometimes Jack responded to what I had written; sometimes to something he read. Each assumed the other would reply. Jack always did. He was clearly disappointed when family or school life interfered so that I could not. It was, however, not an easy relationship for Jack. He understood my interests in American Legal Realism better than my involvement in Critical Legal Studies, and the drift in my teaching from Civil Procedure (where I came to replace him in the classroom) through Contorts and Corporations to Corporate Finance was difficult for him to
follow until I began to work on the history of the American economy, and especially on Buffalo.

It was obvious to me, in these our more recent discussions, that New York City never took when Jack lived there and Boston and Washington had faded away. He was in the end, a Buffalo boy who remembered the vibrant place he came to when he started teaching at the Law School in the immediate postwar years. He was as bewildered as the rest of the locals when it came to understanding why the place had come apart. Unlike most of them, the understanding of these events that my historical/historian's distance provided was, or at least seemed to be, helpful to Jack, though he only became enthusiastic of my pursuits in this area when I teamed up with Bill Greiner to pay attention to the economic redevelopment of the area that both Jack and I called Buffalo, though I always suspected with different geographic boundaries.

Our love affair was hampered by differences in our respective approaches to law as well as by age, though never station. Jack was at heart a litigating lawyer. In Jan Lindgren’s words, he wrote for change. Though I did some litigation in practice, at heart I'm a transactional lawyer. I write for understanding. The New Deal litigating lawyer in Jack was not wholly comfortable with the bureaucratic universe he helped to bring about and then found himself mired in. He wanted to be sure that the bureaucrats got it right. Thirty years younger, and so more comfortable in the bureaucratic universe of my childhood, I only wanted to understand how the bureaucracy works so as to get done what I need to get done.² Still, we never allowed these differences in our approach to law to get in our way, to interrupt our fun.

And so now I have one less note to answer, one less argument to meet. One less person to give me the name of a book I just have to read. The last one, a biography of John Kenneth Galbraith, taught me more about the history of the economic thought in America than I had picked up for

2. Only once did Jack pull rank on me and then it was about my treatment of a student. He never believed, as I still do, that using a 2 x 4 to the forehead is an effective way of getting a student’s attention. In addition, I still believe that it was an illegal move when, initially interviewing me, he followed my order of scotch with his order of soda. That was not the level playing field allegedly beloved by process scholars.
twenty years of my desultory reading on the topic. Jack never gave me a bum steer on a book. And yet, though I have always said that I wished for subtractions from the chaos of my life, like the lady in the song, all I can do is cry.

Writers need readers it is said. I'm not sure that such is the case, but I do know that thinkers need wrestling partners. This is not a need that decreases with age, unless perhaps solecism or brand maintenance reduces thinking to a set of obsessive-compulsive behaviors. But finding a durable wrestling partner is not easy. It takes time to learn the other's moves and then to figure out how to help make those moves better. As we age, there is less time; perhaps we learn more slowly; figure out responses more slowly too. And so, over time each of one's existing partners becomes an increasingly important to the world of ideas. The loss of anyone narrows the circle of life of the active mind.

Jack is gone. My circle is narrowed. I miss my wrestling partner. My life is more empty for his absence, because for all of these years his presence made my life, my thoughts better, richer, and more careful... about all one can ask of a colleague, teacher, and friend.