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Dennis O. Lynch

University of Miami School of Law, dlynch@law.miami.edu

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Remembering John Hart Ely: An Exceptional Colleague

DENNIS O. LYNCH*

When I accepted a faculty position at the University of Miami in the fall of 1974, I indicated an interest in teaching Property for my first year course. Dean Mentschikoff, as was her wont, simply ignored that request. I arrived in Miami in July and was informed I was scheduled to teach Civil Procedure. Obviously, I was already way behind in class preparation.

Under the circumstances, it is difficult to express how relieved I was to find Professor John Ely's 1974 article on the *Erie* doctrine.¹ In the article, John demystified much of the *Erie* doctrine by organizing the major Supreme Court opinions around three distinct problems of statutory and constitutional interpretation.² His coherent framework could easily be used to structure my classroom discussions of *Erie*, and the article itself was an excellent vehicle for teaching first year law students the subtleties of federalism and statutory interpretation in the shadow of the Constitution.³

For the following sixteen years, I relied heavily on John's article to teach my first year students. Consequently, if University of Miami law graduates of that generation were asked about Professor John Ely, they were as likely to identify him as a great scholar of Civil Procedure as they were to regard him as a brilliant Constitutional Law scholar. The fact that so many of our graduates had struggled so hard to understand his explanation of the *Erie* doctrine made them very proud when they learned that John was joining the University of Miami faculty as the first faculty member to hold the chair named in honor of Professor Richard Hausler.

In 1996, I was serving as dean of the University of Denver College of Law, and I jealously watched from a distance as Miami managed to attract such a brilliant scholar, who had also served as a distinguished and successful dean of Stanford Law School. The appointment was

* Dean and Professor of Law, University of Miami School of Law.

1. John Hart Ely, *The Irrepressible Myth of Erie*, 87 HARV.L. REV. 693 (1974).

2. *Id.* at 698.

3. The credibility with students of John's interpretation of the *Erie* doctrine was enhanced by the fact that John was Chief Justice Warren's clerk at the time that the Chief Justice authored the Court's opinion in *Hanna v. Plummer*, 380 U.S. 460 (1965).

regarded as a great coup for Miami, and it brought considerable national attention to the School within the academic community.

In 1999, when Miami approached me about returning to serve as dean, one of the first things I quietly asked myself was, "What would it be like to be dean of a school with Professor John Ely as a faculty member." It is not unheard of for former deans to be difficult faculty members, and the thought of having the former dean of Stanford as a colleague was more than a little intimidating.

As it turned out, I could not have asked for a better colleague. Shortly after I arrived in Miami, John dropped by my office for a brief conversation. In his own subtle way, he let me know that he understood the issues I faced as a new dean and that he would be available if I wanted to talk, but that he would refrain from internal faculty politics.

As I became more comfortable in my role as dean, I made it a practice to drop by John's office and chat with him when I faced a difficult decision. He would listen carefully, prod me to explain what I thought should be done, and make thoughtful suggestions as to how the matter might be handled. At times he would punctuate a suggestion by describing a situation he had faced at Stanford. I grew to rely on him and to value his wise counsel.

My favorite conversations with John, however, were not about the Law School but rather about scuba diving. We are all familiar with the story about John driving back from a scuba diving trip to the Keys when he saw the sign for the University of Miami and thought, "If I taught there, I would be home now." Whenever John related the story, an impish smile would appear and he would go on to say what an excellent faculty he found at Miami during his year as a visiting faculty member and how pleased he was to permanently join the faculty.

We never had the opportunity to scuba dive together, but when we discussed diving, I always had the feeling John might have been a rather undisciplined diver, wandering off to explore some reef in detail without being exactly sure where his diving buddies were. It is easy to imagine how John's immense curiosity could lead him to become engrossed in the unending variety of miniscule sea life on a coral reef, a small world of its own. Diving is like entering a totally different world with its own patterns of behavior and intricate relationships. John loved becoming absorbed in the wonder of that world.

Perhaps the most important contribution John made to the Miami faculty was as a mentor to our younger faculty. He was genuinely interested in their scholarship and would spend hours talking with them about the legal issues they were interested in exploring. He could be a tough critic, but he was always egalitarian and unpretentious. He was

much more interested in the substance of ideas than his own celebrity status.

Our students also benefited greatly from his teaching. He had a wonderfully dry sense of humor that he often used as a tool in his teaching. John could take a rather dull legal issue and turn the analysis into a challenging intellectual journey for his students.

Simply put, one could not ask any more of a colleague. Our Law School community cherishes the time John spent with us, and we miss him very much.