THE ONE AND ONLY

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There is no one remotely like Professor David D. Siegel, whether in manner of expression, breadth and depth of knowledge of New York's procedural laws, or impact upon those procedural laws. What is more, although my own personal experiences with New York litigation go back only a paltry few decades, I strongly suspect that there never has been any New York commentator remotely like the good professor.

First and foremost (for me, at least), there is the unique mode of expression: writing that does not mince words or beat around the proverbial bush, but that may well amuse even as it informs and warns.

Who else would end an article, "The lesson of the case to lawyers is that if you want out, get out fast, and look sharp about it"?[1] Who else, in speaking of notaries, might observe,

> What's their real compensation, beyond the $2 per oath provided for in Exec. L. § 136? Do they just act as a magnet drawing in customers for some other product, a "loss leader" of a kind?
>
> If they're just performing a public service and can't yet cash in on their ticket to heaven, maybe they should be allowed to calculate the annual fair market value of their efforts and take it as a charitable deduction on their tax returns.[2]

Who else would end with the following exhortation:

> In other words, all you petitioners and plaintiffs out there, ask not what you can do about an intrusive clerk; ask instead what an intrusive clerk can do for you. When the

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[1] David D. Siegel, *Firm's Failure to Make Clear Its Termination of Representation of Clients Keeps Statute of Limitations Alive Against It*, SIEGEL'S PRAC. REV., Dec. 2008, at 3.

[2] David D. Siegel, *Notary's Failure to Administer Oath Subjects Him to Liability for Forged Power of Attorney*, SIEGEL'S PRAC. REV., Oct. 2008, at 4.

> clerk speaketh, harken unto her words. Heeding those words now may give you a great idea for a toast the next time you're at a lawyers' libation:
>
> Three cheers for the meddlesome clerk![3]

Through the hornbooks, the CPLR commentaries, and the myriad articles and practice notes, there is a distinct and instantly recognizable style and focus. The writing is direct, lucid, unpretentious, and even refreshing. The focus, almost unvaryingly, is on the *real* world, the *actual* practice of law, and the way that a particular problem, issue or rule *actually works* or would work in the places where law is practiced. But mostly, just below the surface and enveloping the whole, there is the Siegel wit and witticisms, and there is the backdrop of amusement, bemusement, and, of course, rich ironies.

Second, and quite apart from the mode of expression (although, perhaps, partly because of the mode of expression), there is the *impact* the professor has had on the law.

It is difficult to measure objectively any commentator's importance in shaping the law. Popular hornbooks get cited in legal briefs and court decisions. So do practice commentaries. The more popular hornbooks get cited more often. Professor Siegel's hornbooks and commentaries have been cited in hundreds and hundreds of court decisions.[4] By that measure, there has likely not been a single commentator as widely cited in this state in generations. Yet, I would suggest that the simple how-many-times-cited measure understates Professor Siegel's impact on the law.

Impact, I would urge, is a function not only of *how often* a commentator is cited, but also of how, *and in what manner*, such citation occurs. Typically, a commentary or hornbook is cited as support for the existence of a given rule. The commentator says that the rule (or practice) is X, therefore the rule (or practice) is X. Obviously, Professor Siegel's writings have been widely cited in that manner, including, frequently, by the Court of Appeals.[5]

Yet, the point is that Professor Siegel's impact has transcended that classic sense in which the commentator is cited as a summarizer of a practice or rule. Courts, including the Court of Appeals, have frequently cited and accorded weight to the

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[3] David D. Siegel, *Three Cheers for the Meddlesome Clerk: Intrusive Acts Can Save the Plaintiff's Case at Commencement Time*, SIEGEL'S PRAC. REV., Dec. 1999, at 2.

[4] *See* Patrick Connors, *The King of New York Practice*, 72 Alb. L. Rev. 447 (2009).

[5] *See, e.g.*, Iacovangelo v. Shepherd, 833 N.E.2d 259, 260 (N.Y. 2005); Brill v. City of New York, 814 N.E.2d 431, 433 (N.Y. 2004); People v. Evans, 727 N.E.2d 1232, 1235 (N.Y. 2000).

professor's *normative judgments* about what is good and bad about current laws and practice, and about what the law *should be*.[6] The Court of Appeals has, on occasion, even engrafted Siegelism into the law itself.[7]

Finally, but certainly not least important, the quality that pervades and defines Professor Siegel's writing is the governing intent. There is an unabashed agenda and it is evident in almost every commentary and article.

Professor Siegel is *for* the working lawyer whether that lawyer practices in Supreme Court Kings County, a village court in Fonda County, or a surrogate's court in Buffalo. Professor Siegel is *for* disposition on the merits. He is *against* traps that may claim the unwary (or even the wary). For decades now, he has shed light on those traps and made it his business to warn of their presence and how they may be avoided.[8]

For more than a generation, lawyers across New York could turn to the writings of Professor Siegel for sage warnings as to the procedural hazards that might lie underfoot. Bench and bar could turn to Professor Siegel's writings as the last word on all matters procedural. Courts could also consider the professor's advice as to what the law should be. And, as an added bonus, we, who in one way or another used and relied upon those writings, would at the

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[6] *Iacovangelo*, 833 N.E.2d at 260 (adopting a Siegel-suggested manner of harmonizing precedents that some had deemed inconsistent); *Brill*, 814 N.E.2d at 433 (citing a Siegel hornbook for the proposition that "summary judgment is a great benefit both to the parties and to the overburdened New York State trial courts" (citing DAVID D. SIEGEL, NEW YORK PRACTICE § 278–79, at 438–40 (3d ed. 1999))).

[7] *See, e.g.*, *Evans*, 727 N.E.2d at 1235 (adopting Professor Siegel's description of the doctrine of law of the case as being "a kind of intra-action res judicata" (quoting DAVID D. SIEGEL, NEW YORK PRACTICE § 448, at 723 (3d ed. 1999))).

[8] David D. Siegel, *Merely Altering Attorney's Name on Summons and Complaint After Filing But Before Service Held Not to Void Jurisdiction*, SIEGEL'S PRAC. REV., Dec. 1999, at 2 ("As an incident in the lead note in this issue, we once again point up the importance, in a supreme or county court action—where filing rather than service of the summons and complaint marks commencement—of assuring that the served papers be identical to those filed."); David D. Siegel, *Each Winner Should Serve Its Own Notice of Entry in Order to Start Appeal Time Running Against Itself*, SIEGEL'S PRAC. REV., Dec. 1994, at 3 ("Each winner, whether in the action or on a mere motion, should get a judgment or order entered promptly, doing so either in close coordination with others on the same side of the issue (e.g., all signing the notice of entry) or else regardless of what any other party may be doing. . . . If you're the losing party, on the other hand, and you're intent on appealing against all prevailing parties, and you receive notices of entry from the various winners at different times, it's wisest to take an appeal against each one within the period measured from that particular party's service of a notice of entry."); David D. Siegel, *OCA Clarification About Size of Type in Legal Documents*, SIEGEL'S PRAC. REV., Dec. 1994, at 2 ("The bar should be aware of the amendment of CPLR 2101(a), part of Chapter 100 of the Laws of 1994. It took effect January 1, 1995. It imposes minimum size requirements for the type to be used hereafter in legal documents. It says that the letters in the summons must be of at least 12-point size . . . .").

same time be entertained by the wit and style with which they were written.

There is only one David Siegel.