

MENTOR TO THE PROFESSION: DAVID D. SIEGEL

*George F. Carpinello**

As I write this, I am in the midst of examining an obscure issue of New York law. Surely, I say to myself, this issue has long been settled in a state with such a massive caseload as New York. But it has not been settled, and I have to go back and look at cases fifty, sixty, and seventy years old. I think to myself, “David would have found this fascinating.” That is the way David Siegel approached the law: with sincere, childlike fascination. Every new case, every new amendment to the CPLR, every new practical issue being faced by attorneys was an object of wonderment for David. He loved the law.

David, unfortunately, was a member of a diminishing species: an academic who wrote for and about the profession. David was probably cited more than anyone else by New York’s courts, and rightly so. He was *the* expert on New York practice and probably the most lucid writer on federal practice as well. In recent years, I have heard from more than one judge complaining that academics today seem to be writing for a small, self-selected coterie of *illuminati*, and that they view the actual practice and development of the law as unworthy of their attention. Increasingly, it seems that writing about what the current state of law is or what it should be comes primarily from practitioners. With some exceptions, academics have withdrawn from the field of battle.

David was also something else that doesn’t seem as valued these days: a great teacher. Students loved his classes. When he taught at Albany Law School, the Dean used to put a limit on the number of students who could take his classes. David routinely filled the largest lecture hall. Why? Because he was always enthusiastic about his subject and he desperately wanted to impart that enthusiasm to his students. Let’s face it, statute of limitations rules are not the stuff of drama. But with a story from David about some poor attorney’s frantic efforts to beat the statute or a story about the

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unfortunate counsel who filed her papers in the wrong clerk's office, lectures about the statute of limitations became life-long morality tales.

Many people have written about David's love of language and his fantastic ability to convey arcane issues of law in a straightforward and enjoyable way. David worked very hard to find exactly the right word to express, in his understated way, his criticism of a particular court decision or the latest example of how *not* to represent a client. When you picked up the *New York Law Digest* or *Siegel's Practice Commentaries*, you knew you were going to learn something, but you also knew you were going to have fun.

I was first exposed to David's teaching and writing when I studied for the New York Bar Exam. Because I had gone to law school out of state, my brother, a graduate of Albany Law School who had Professor Siegel as a teacher, warned me that I was in danger of failing the New York State Bar because I did not have an adequate grounding in New York practice. Even to this day, I can remember sitting at the dinner table listening to my brother predicting my failure and the shame it would bring on the family. Fortunately, PLI had the good sense to hire Professor Siegel, and, with his help, I somehow passed. (I think my brother was actually disappointed.)

I was fortunate to come to know Professor Siegel long before I even sat for the bar exam through my mother's association with Albany Law School. My mother worked as an alumni secretary and secretary to the *Albany Law Review* at Albany Law School for over thirty years. Through her association, my brother and I had gotten to know many of the professors at the law school and, of course, Professor Siegel. My mother always spoke very fondly of Professor Siegel, not only because he was always friendly to everyone, especially the staff, but also because Professor Siegel had mastered Italian and enjoyed speaking Italian to my mother. This was not as easy as one might think because, after all, my mother is Sicilian, and her "Italian" was the Sicilian dialect spoken on the island at the end of the nineteenth century, when her parents left for America. Even before I actually met him, I felt I knew "Professore" Siegel through my mother's stories.

Several years later, I got to know David even better when I became a member of the faculty at Albany Law School and was honored and privileged to have David as a colleague. As a young faculty member, I strove very hard to convey the same enthusiasm for the law and respect for the students that were the hallmarks of David's teaching style. I even had the privilege of teaching New

2014/2015]

Mentor to the Profession

307

York practice for one semester when David uncharacteristically had fallen ill. I am sure the students that semester felt cheated because they did not have the great David Siegel, but I did my best to excite third-year students about the methods of service of process, the difference between a motion to dismiss and a motion for summary judgment, and the various ways one can execute on a judgment. To the great relief of Albany Law School and its students, David returned the next semester.

As many of David's friends know, David had an opinion on just about everything and never hesitated to express it. But David also knew what was important and what was trivial. He never sweated the small stuff. Understanding that distinction was hard for me, especially whenever I entered a faculty meeting. I would always tell myself at the beginning of each meeting that I would say nothing during the meeting and would simply listen to the views of others. Inevitably, however, I would get drawn into an argument, the length of which would be inversely proportional to its importance. David would not tire of reminding me that I should not get so excited about trivial issues, that the small things would work themselves out, and that I should keep my powder dry for the really important things that affected the lives of our students and the future of the institution.

This advice became even more important when I became Chair of the Advisory Committee on Civil Practice. This committee, composed of practicing attorneys from all over the state, makes recommendations to the Chief Administrative Judge for changes to the CPLR and the uniform rules in New York civil courts. David was a member and former chair of the committee for decades. He had resigned as chair of the committee a few years before I assumed the position. Until he died, David was the rock upon which the committee was built. There wasn't a single discussion that didn't begin with a question to David about what the problem was, whether there was a need for a statutory change, and what that change should be. Indeed, for several years, easily half the agenda of each meeting was filed with topics raised by David himself. David knew at all times what was happening in New York's trial courts and what problems were arising. He knew this not just because he read virtually every published decision as soon as it came out, but also because he constantly lectured throughout the state and was always asking practicing attorneys and judges what problems they saw arising in the daily practice of law. Not only had he written *the* encyclopedia on New York law, *New York Practice*,

but he *was* an encyclopedia of knowledge on the ever-changing landscape of civil practice in New York.

Of course, he was also the standup comic of the committee. David never hesitated to poke fun at every institution, including the courts and the Legislature, but he especially enjoyed skewering me as chair of the committee. He constantly regaled us with tales of errant judges and practitioners and the experiences of his own incredibly varied life. In the last few years, as David's health began to fail him, he was not able to make it to our committee meetings as often, but he would routinely call me and suggest new amendments to the CPLR or the uniform rules. I would often call him and ask for his advice, especially when I thought that the legislature had mangled one of our proposals or when a court had rendered a decision that I felt misconstrued an important provision of the law. As in the days when I was a young faculty member, David would routinely calm me down and remind me to stop sweating the small stuff and to focus on the bigger issues.

Not too long ago, the committee was particularly exercised about a recent decision of the United States Supreme Court that had overturned over one hundred years of jurisprudence on personal jurisdiction.¹ I had taught, as David and every other civil procedure professor had taught, that a corporation was subject to general jurisdiction, that is, that it could be sued in a state on any claim arising from anywhere if it were "doing business" in that state. The Supreme Court said no: with few exceptions, a corporation could not be sued for claims arising anywhere unless the state in which it was sued was the corporation's principal place of business or place of incorporation.² Every member of the committee felt that New York should do something to respond to the decision, and we drafted a bill making it clear that any corporation that sought to do business in the state was expressly consenting to general jurisdiction in the state.³ The bill is somewhat controversial and it has not yet been passed by the legislature, but it has widespread support. When I called David to talk about the decision, I was shocked by his reaction. David had written extensively over the years about the evolving case law on the "doing business" test, and at least fifty years of writing on the topic was now rendered irrelevant. But David calmly said, "I know this decision overturns over one hundred

¹ Daimler AG v. Baumbler, 134 S. Ct. 746 (2014).

² The decision does not affect "specific jurisdiction," pursuant to which a corporation may be sued for claims arising in the state.

³ S. 7076, 2014 Leg., 237th Sess. (N.Y. 2014) (as passed by Assembly, June 2, 2014).

2014/2015]

Mentor to the Profession

309

years of law and that it has changed every civil procedure professor's world view, but is it really such a bad decision and will it have a significant adverse effect on New York practice?" At first, I was speechless, but then I realized that David had once again taught me another life lesson: do your best, draft a bill, but it won't be the end of the world if it doesn't pass. As usual, David ended the call with a joke and told me not to take life or the CPLR so seriously.

David was always very loyal to his students, and he worked very hard to place his best students on a path to success. This included recommendations for the highest clerkships, appointments to the U.S. Attorney's Office, and associate positions at some of the nation's top law firms. If David thought you were good, you *were* good. Judges and lawyers knew that, and recommendations from David Siegel were invaluable. David also remained very close to many of his students throughout his life, following their careers and their families, and lending fatherly advice, whether asked for or not. One lawyer that David had remained particularly close to was Tom Gleason, a clerk to former Chief Judge Sol Wachtler. He is now a very successful lawyer in Albany and also a member of the Advisory Committee. Tom was with David during his final days. Tom reported to me that David was, as usual, extremely upbeat and calm. He told Tom he had a wonderful life and family for which he was truly grateful; he had no complaints. So David completed his life as he always lived it: as a mentor, teaching us not only how to live our life, but how to meet our end.