

## Jerry Deise

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# Jerry Deise

## TRIBUTE TO JERRY DEISE

THE HONORABLE PAUL W. GRIMM\*

Jerry Deise and I both started teaching at the University of Maryland School of Law around twenty-five years ago. He was a professor; I was an adjunct. We became friends from the start. He had been a criminal defense lawyer, and a damn fine one, representing defendants in death penalty cases throughout the state of Maryland. Jerry was Chief of the Capital Defense Division of the Maryland Public Defender's Office for three years, and during his tenure no one was executed in the state. I had been an Army lawyer, an assistant state's attorney, and assistant attorney general, and then gone into private practice handling commercial litigation. We both had an affinity for trial work, the rules of evidence and procedure, the importance of the adversary system, and a hankering to teach law students to love what we did almost as much as we did.

I taught pretrial civil procedure, trial evidence, evidence, scientific evidence, and discovery of electronically stored information. Jerry taught criminal law, evidence, trial evidence, professional responsibility, trial advocacy, advanced trial advocacy, and directed the law school's Criminal Defense Clinic and the school's nationally ranked Trial Advocacy Program. Along the way he was voted Outstanding Teacher of the Year, and awarded the Richard S. Jacobson Award for Excellence in Teaching Trial Advocacy by the Roscoe Pound Civil Justice Institute, where he was an academic fellow. He devoted countless hours as the coach of the Trial Team and travelled with them as they competed with, and usually defeated, other law schools throughout the country.

In a moment of weakness, he asked me to act as a judge for one of the team's practice trials, and I did that for years. I must have learned something from Jerry along the way, because in 1997 I became a judge, and Jerry and I continued to work together at the law

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\* Judge, United States District Court for the District of Maryland.

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school and in educational programs for the bench and bar. We collaborated on programs, co-authored two law journal articles on the Confrontation Clause, and even testified at a legislative hearing in Annapolis regarding a proposal to adopt the forfeiture by wrongdoing hearsay exception to the Maryland rules of evidence.

Throughout our years of friendship, Jerry never lost the passion of a criminal defense lawyer committed to representing his client, often an unsympathetic one, charged with a horrible crime, and on trial for his life. Jerry did this with a unique style. Some defense lawyers rely on bombast, generating more heat than light. Others are cunning, using procedure, evidence, and technical flourishes to outmaneuver the prosecution. Jerry did not lack enthusiasm or cleverness, but he combined them with what another renowned lawyer who knows him well described as his “considerable humanity”: the ability to show a judge and jury how a “very damaged client” did not deserve to die, despite having committed a horrible crime. That brand of advocacy has its foundation in the character of the lawyer, what Aristotle referred to as “ethos.” It cannot be faked; it must be genuine.

Jerry’s abilities as a trial lawyer transferred perfectly to his role as an academic, clinical professor, and trial team coach. He had a knack for instilling his attributes in his students, teaching them, mentoring them, encouraging them, and never letting them forget what it means to have the responsibility for the life of a client in your hands. I can recall dozens of instances over the years when students in my class who had worked with Jerry would tell me how much he had inspired them and shaped their decisions about the kind of lawyers they should try to become. When they worked with Jerry they believed that they too could develop the skills to, as one of them told me, “help our legal system live up to its best ideals—patriotic ideals—that in America, the quality of your rights, the quality of your justice, is not determined by the amount of wealth you have.”

On the wall of my office hangs a framed quote from a speech given in 1926 by the great appellate advocate John W. Davis, honoring Thomas Jefferson’s work as a lawyer. It reminds me of why I became a lawyer, and what I must aspire to as a judge. It describes Jerry to a “tee.” Davis said:

In the heart of every lawyer, worthy of the name, there burns a deep ambition so to bear himself that the profession may be stronger by reason of his passage through its ranks, and that he may leave the law itself a better instrument of human justice than he found it.

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As someone who has known and worked with Jerry for nearly twenty-five years, I can say with complete certainty that he has done just what John W. Davis exhorts us all to do: leave the law a better instrument of human justice than we found it. Thank you, Jerry, for showing us the way. You will be missed by the Law School community after you retire, but you will never be forgotten.

### **JERRY DEISE & THE INTEGRITY OF TEACHING**

ALAN D. HORNSTEIN\*

The teaching career of Jerry Deise may be the best response to the false categories that saturate much of the discussion of contemporary legal education: theory vs. practice; doctrine vs. skills; Socratic method vs. clinical teaching; civility and professionalism vs. (over)zealous advocacy; and especially, the academic vs. the professional. His teaching at once embraces and ignores these categories by integrating the values reflected in them into a unified conception of professional legal education—a kind of integrity of teaching not often seen.

His educational practice is closer to the architect's atelier than the academic's classroom. He is more a coach than a didactic lecturer. Coaches demand more from their charges than most other teachers, especially in terms of responsibility for their own learning, their own improved performances. As a consequence, Jerry's students develop a sense of pride in their own work. And that pride, in turn, fosters a sense of professional responsibility.

I had been teaching Evidence for some years when Jerry joined the faculty. He began in the Clinical Law Program, and his reputation as a tough but caring teacher took hold early. Like many of the "traditional" faculty, so-called, I sometimes assisted the clinic on particular issues, in my case issues of evidence law. From time to time, I would conduct an "Evidence Boot Camp" for clinic students. It was in that capacity that I first knew Jerry, and was impressed by what seemed his natural talent and integrity as a teacher. Later, I came to see the extent to which that natural talent was supported by prodigious effort.

Again like my colleagues, I assisted in preparing various student teams for advocacy competitions. Soon Jerry became heavily involved

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with the National Trial Team and I came to know him even better in that role. He took charge of the National Trial Team and transformed it into a formidable force in interschool competition. More important, he took what might have been an extracurricular activity and transformed it into a vital learning experience. Maryland's consistently successful reputation in advocacy is attributable almost entirely to Jerry's efforts as coach and mentor to a generation of student competitors.

Our friendship grew and deepened as we worked together on these various projects. We enjoyed collaborating and shared a vision of legal education, not merely as education for knowing, but as education for doing. All of this culminated in our eagerness to co-teach a course. We thought teaching together would be a hoot.

I had long been teaching Evidence as a problems-based course, and Jerry, in addition to his work in the clinic and with the National Trial Team, had been teaching Trial Advocacy. The natural next step was to combine these courses so that as students learned the rules of evidence, they would put them to work in the courtroom. The resulting course, Trial Evidence and Advocacy (one semester, six credit hours), exceeded our expectations (which were far from modest in the first place) in every way.

Among the advantages of co-teaching with one of the school's most popular teachers is the assurance that the course would be fully subscribed. And, in fact, we could have filled the course several times over. As a consequence, students who were able to enroll felt privileged at the opportunity and came to the course with a greater willingness to devote the time and energy required. As students later reported, most far exceeded the effort typical of a six-credit course.

The theory of the course was that as students were learning the doctrinal aspects of the law of evidence, they would be putting that doctrine to use in simulated litigation. Thus, as they were learning relevance, they were developing an appreciation for the importance of the theory of the case. They would learn the doctrine underlying the admissibility of expert testimony, and then qualify experts and elicit their opinions. The focus shifted from a verbal knowledge of evidence rules and doctrine to an appreciation of how to use that knowledge on the ground, from knowledge of "what" to knowledge of "how."

Finally, we wished to enable students to learn from their own experiences, in the hope that they would carry that skill beyond the law

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school. Thus, almost all student practice was video recorded and a large part of the course involved self and peer critique.

In pursuing these pedagogical goals, Jerry was a superb guide, not just for the students, but for me as well. Many of the students had signed up despite the heavy workload because Jerry was one of the instructors. They were not disappointed. It was astonishing how a teacher as demanding as Jerry could command not just the respect but the affection of so many students. Students regarded his insistence on their best efforts as a sign of respect for them as professionals and care for them as individuals.

As for me, Jerry's insights into the teaching enterprise was something of a revelation. Teaching Trial Evidence and Advocacy with Jerry had a profound effect on my teaching. My career as an Evidence teacher can be divided into two parts: before co-teaching with Jerry and afterwards. Before Trial Evidence and Advocacy, I taught a problems-based course in which students described what was necessary to resolve the problem presented. So, if the problem involved laying the foundation for an expert witness, students had to state the elements of the foundation. After Trial Evidence and Advocacy, students presented with the problem of qualifying an expert were required to ask the questions that would elicit the foundation. Before, they had a verbal understanding of doctrine; after, they learned to use that understanding.

As we noted in the article we wrote describing our experience with the course, each of us thought we would "carry the enriched understanding we gained from this experience [and from each other] into our future teaching and scholarship."<sup>1</sup>

That has certainly been true of my experience, for which I owe my friend Jerry an enormous debt of gratitude.

And it was a hoot teaching with him.

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1. Alan D. Hornstein & Jerome E. Deise, *Greater Than the Sum of Its Parts: Integrating Trial Evidence and Advocacy*, 7 CLINICAL L. REV. 77, 122 (2000).

**TRIBUTE TO JERRY DEISE**

MICHAEL PINARD\*

Jerome (Jerry) Deise is the consummate lawyer and teacher. Throughout his years at Maryland, Professor Deise taught the Criminal Defense Clinic, Trial Advocacy, Evidence, Criminal Law, and Professional Responsibility. He has long been a lion of the criminal defense bar in Maryland, having served as the Chief Attorney of the Capital Defense Division of the Maryland Office of the Public Defender prior to his teaching career at Maryland. As a result, his relationships in the Maryland legal community run deep and, thus, the School of Law continues to benefit from his footprints.

We in clinical legal education take great pride in our teaching; about imparting to students the myriad skills and rules necessary to represent clients zealously and holistically as well as enhancing our noble profession. However, very few have taught as carefully and thoroughly as Professor Deise. He modeled for the students the attention to detail (knowledge of the law and listening skills), the sound judgment and, of more importance, the *lack of judgment* necessary to earn the trust of clients, particularly clients charged with criminal acts. He imparted to his students the skepticism and belief necessary for effective criminal representation.

Professor Deise also impressed upon his students the sanctity of the courtroom. He taught his clinic and trial advocacy courses in a mock courtroom, and he ran the class like a courtroom. Eating in the "courtroom" was forbidden. Tardiness was never acceptable. The students instantly got it. They comported to their roles as lawyers and professionals. They understood that their roles were not confined to investigations, client interactions, and the various stages of litigation, but rather extended to everything they did in these courses. As a result, Professor Deise imparted to his students the understanding necessary to thrive in the profession and to survive in the courtroom. His teaching excellence did not go unnoticed. He was awarded the Richard S. Jacobson Award for Excellence in Teaching Trial Advocacy by the Roscoe Pound Institute and was also voted the law school's Teacher of the Year.

Because of Professor Deise's popularity, his criminal defense clinic was perennially over-subscribed. The wait lists often stretched into

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the dozens. Some of those who had the misfortune of remaining on the wait list had the fortune of working with Professor Deise on the trial team, which under his leadership became and remains a national powerhouse.

Professor Deise's work with the National Trial Team exemplifies the rigor of a top-notch simulation course. The learning is deep and embedded. Professor Deise taught his students every inch of trial work—mastery of facts, law and evidence; advocacy and persuasion; judgment and tone. The learning was intense, but the benefits have been permanent.

Professor Deise trained generations of litigators. But he also cultivated a community. Through working together—the training, the practices, and the competitions—his trial team students formed a special bond, which extended beyond those experiences and the law school. Several of his former students have served as volunteer instructors for subsequent trial teams. Some have built law practices together. All, in some way, remain connected with Professor Deise. At Professor Deise's retirement celebration, dozens of his former trial team students joined him on stage, a remarkable display of the lawyers he has trained and the lives he has impacted.

Professor Deise's teaching fused theory and practice, in the very best of the Maryland Carey Law tradition. He believed firmly that theory and practice are complementary and integrative. He often reiterated the need to infuse practice and skills-related courses with theory. He led by example, as he and Professor Alan Hornstein developed a Trial Evidence and Advocacy course, which combined the standard Evidence course with the standard Trial Advocacy course. Professors Deise and Hornstein designed the course "to assist students in acquiring a mastery of evidence doctrine, not merely as verbal knowledge, but as it is used operationally."<sup>2</sup>

Professor Deise's scholarship carried a similar tune. His articles applied his evidentiary expertise to critical issues in criminal justice, including the interplay between witness intimidation and the confrontation clause,<sup>3</sup> and an empirical examination of the effect of victim impact evidence in death penalty cases.<sup>4</sup> Through his scholarship,

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2. Hornstein & Deise, *supra* note 1, at 81.

3. Paul W. Grimm & Jerome E. Deise, *Hearsay, Confrontation and Forfeiture by Wrongdoing: Crawford v. Washington, A Reassessment of the Confrontation Clause*, 35 U. BALT. L. F. 5 (2004).

4. Jerome E. Deise & Raymond Paternoster, *More Than a "Quick Glimpse of the Life": The Relationship Between Victim Impact Evidence and Death Sentencing*, 40 HASTINGS L. Q. 611 (2013).

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Professor Deise extended his commitment to collaboration, as he understood that scholars with different experiences, expertise, and perspectives can deepen understanding.

Last—but as important—Professor Deise exhibited the balance necessary to live full professional and personal lives. While his dedication to his clients and students was relentless, his family remained central. He always beamed with pride when talking about his wife, son and grandchildren. They inspired his journey.

### TRIBUTE TO JERRY DEISE

STUART M. SALSURY\*

Making trial lawyers isn't easy work. It takes someone with a keen eye to spot those with special talent who can be molded into word warriors, Don Quixotes, yearning to right the unrightable wrongs. Usually, the young people chosen have large egos, a facility for public speaking, and an idea that they are already great trial lawyers. These wannabe trial lawyers first must be pummeled with the rules of evidence until they flow out of them like a waterfall, even under the most stressful circumstances. They must learn to listen; not just talk. They must learn to be self-critical and to accept criticism. They must learn to think out of the box and not merely present the obvious nor accept the apparent. They must learn to endure the combat of trial with relish. They must learn the thrill of victory and the agony of defeat, not to relish victory but to hate defeat. They must also learn that victory at trial is not about you but is about justice for your client.

The molders of these young trial lawyers must teach them that to be a great trial lawyer, you must also be a great legal writer, that keeping something out of evidence is sometimes more important than putting in evidence. The molders of these young people must learn to tame the ego without crushing the spirit. He must teach them to anticipate the opponent's strengths, to take a shield and make it a sword and to present themes, not just facts: to become storytellers. He must also understand the delicate balance as to when to be critical and when to be praiseworthy. And most of all, he must make sure that a young trial lawyer's presentation is not "a tale told by an idiot, full of sound and fury, signifying nothing."<sup>5</sup> Fortunately for the Carey

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\* Attorney, Salsbury, Clements, Bekman, Marder & Adkins, LLC.

5. WILLIAM SHAKESPEARE, *MACBETH* act V, sc. 5.

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School of Law, we have found a master craftsman in shaping trial lawyers—Professor Jerry Deise.

When I was in law school, more than forty years ago, the class on trial advocacy did little to prepare me for the real world experience. We basically studied the “theory” of trial advocacy without actually practicing any trial advocacy. Now more than ever, our students need to hit the ground running, equipped with the tools and strategies necessary to become marketable commodities in a very tough market. Because of Jerry’s efforts, members of the previous trial teams have had a definite advantage in job placement, advancement, and success in the trial arena. Having had two years of personal training and guidance under Jerry’s mentoring, these students are years ahead of the competition in their trial skills, knowledge of evidence, advocacy and court room comfort. Because young lawyers are getting fewer and fewer chances to try cases, it has become a real advantage to have been involved in multiple trial competitions with real judges, complex fact situations, and topnotch opponents. My law firm has, with great satisfaction, hired five former trial team members.

The accomplishments of the trial teams over the years are a testament to Jerry’s guidance, training, and development of one of the top trial advocacy programs in the country. The University of Maryland Carey Law School teams have won a national championship, regional titles, and multiple competitions, in both criminal and civil cases. The program has been rated one of the top ten in the country.

The mark of a great teacher is not only to imbue his students with the subject matter but also to inspire them to attain mastery of their talent and use it for the greater good. Jerry’s trial team members have shined in this regard and can be counted among the most successful young trial lawyers in Maryland. They have also developed a camaraderie that serves them well in their private practices, and serves the vitally important goals of professionalism and civility in networking and in being able to confer with each other as they are faced with the nuances of real cases. They also give back to the law school and to the trial team program and come at Jerry’s beck and call to serve as judges, coaches, and to help the trial team in any way toward its continued success.

Jerry’s devotion to the team has been exceptional. In talking with several of his former students, I learned that he had a wonderful way of critiquing his team members. He would listen to everything carefully and thoughtfully, would offer bits and pieces of wisdom, but was never harsh or berating. He always managed to get his point across precisely, directly, and diplomatically. He made sure his stu-

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dents understood the importance of listening, always. Whether directing a witness, or cross examining your opponent's expert; the importance of paying attention to the witness's actual testimony was always emphasized. They said Jerry would take away pre-written notes and outlines and force the students to really listen to and engage with the witness while thinking critically at the same time. He would stress the importance of relating to a jury, of breaking down complex concepts and issues and disregarding "legalese" in favor of arguments that could be readily understood. These students told me he was always willing to meet with them, to answer questions, to hash out the perfect closing argument or to just throw around different case theories. Tuesday nights, they told me, were always dedicated to gleaming bits of wisdom from Professor Deise. Unanimously, team members related that the trial team was their favorite part of law school and their most valuable experience; the one that most successfully prepared them to actually practice law.

Jerry got me interested in the trial team program many years ago when he called to ask if I would judge a session prior to a competition. He had an amazing way of gathering experienced judges and top trial lawyers to mentor his teams. He believed that constructive criticism from those in the arena would make his team stronger and give them the benefit of trial tested experience in shaping their presentations. When I judged the competition, I was amazed at the poise, confidence, and talent of these young students. It was certainly well beyond my talents and experience at a similar age. There was no doubt in my mind that they were getting training of the highest degree and it showed.

My own son, Ben, was fortunate enough to be chosen for the trial team when he was a student at Maryland. I saw firsthand how his trial lawyer skills developed by leaps and bounds as he progressed through the years on the team. He was fortunate enough to be on the trial team the year that it won the national competition. He and his teammates always praised the multiple benefits they received under Jerry Deise's tutelage, and Ben has returned to the trial team as a coach. Watching them mature into seasoned trial lawyers inspired me to become a rabid supporter of the trial team and to set up a trial advocacy fund to ensure its longevity and success. I have been a great admirer of Jerry Deise for many, many years and thank him for his multiple accomplishments on behalf of his students and the law school and for allowing me and my family to be a part of that.