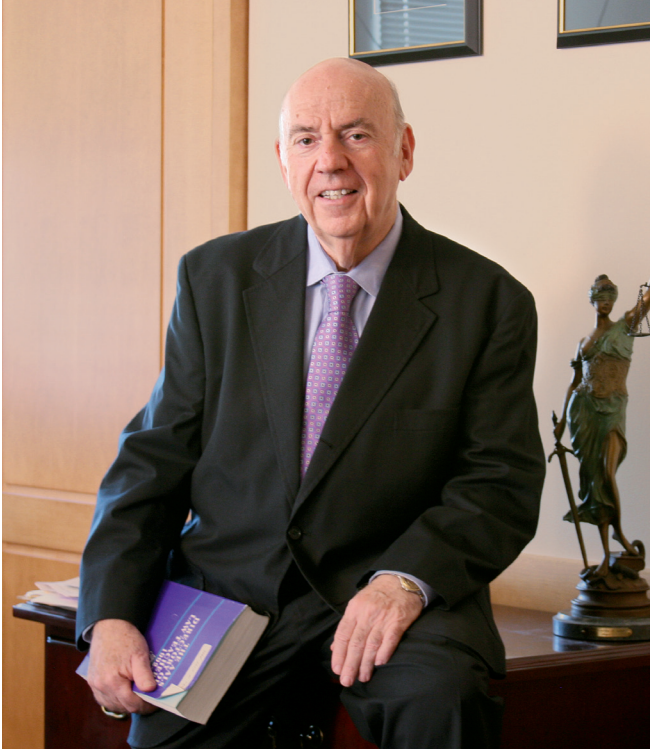


BROOKLYN LAW SCHOOL
remembers



JUDGE
DAVID G. TRAGER

1937–2011

Remarks at Memorial Program
April 27, 2011

INTRODUCTION

Interim Dean Michael A. Gerber

SPEAKERS

Stuart Subotnick '68
Chairman of the Board of Trustees

Hon. Carol Bagley Amon
Chief Judge
United States District Court
Eastern District of New York

Professor Joel Gora

Hon. Ramon E. Reyes, Jr. '92
Magistrate Judge
United States District Court
Eastern District of New York

Frank H. Wohl
President of the Federal Bar Council

Professor Neil B. Cohen

Roberta Weisbrod

President Joan G. Wexler

Introductory Remarks by Interim Dean Michael Gerber

Good afternoon and welcome to this celebration of David Trager's life. I think that every corner of David's personal and professional life is represented in this room — and of course there is a lot of overlap there — and we are honored that so many of his judicial colleagues have joined us today.

In spite of the fact that, for about a decade, when David was Dean, I helped him with his speeches, I experienced unexpected difficulty in formulating what I would say today.

I had trouble understanding why it now seems easier to have written for David than to write about him.

It's not that David's influence is hard to measure. To the contrary, it's huge and indelible and something that neither his absence nor the passage of time can erase.

The problem is performance anxiety, and the cause is the realization that there is no one in this room whose life wasn't profoundly touched by David in one way or another, who didn't love David... and the responsibility for speaking for all of us is daunting.

So, I've tried to focus on what we all have in common — and what we all have in common are the lessons that we learned from David.

First Lesson: If it makes your stomach hurt, don't do it.

How many of us, when faced with a difficult decision have asked ourselves, "what would David do" or, more accurately, "what would David not do," because David had an uncanny ability to distinguish what could be done from what should be done and he always operated accordingly. That's why the inability to pick up the phone and consult David is a loss we all feel so acutely.

So now I subject tough choices to what David would call the kishkas test. It usually produces the right result and reduces dependency on antacids.

Second Lesson: Sometimes what appears to be a problem is a solution. It all depends on how you look at it.

One morning I showed up at work wearing a new tie, or what David believed to be a new tie. It caught his attention. "Tell me something," he said, "are you a clothes horse?"

I thought this might be a good opportunity to seize the moment to straighten out his perennially twisted tie and to show him how to tie a tie properly.

Good thing I didn't. Months later, David explained that he had long ago figured out that if he wore his ties inside out, they wouldn't get stained and they'd last longer.

David had an uncanny ability to solve the most complex, intractable problems, including how to keep ties stain-free, and I think it was his ability to turn a situation inside out and examine it from every angle that made this possible.

Lesson Three: Apply the Mallomar test.

If you ever had lunch with David and a desert menu was presented, you know what I mean.

Before David would order desert, he would peruse the menu and consider whether anything had the potential of tasting better than the mallomar — the chocolate-coated, extruded-marshmallow and graham cracker cookie — that was waiting for him at home. If the potential wasn't there, he would pass. This was not because David was a proponent of delayed gratification; nor was it because he failed to understand that the perfect can be the enemy of the good.

It was because although David lived very much in the present, he always had his eyes on the future and the promise — and in his darker moments the peril — that it might hold. That is why he often would say, “Keep your eyes on the horizon.” Don't get so mired in the turbulence of day-to-day affairs that you lose sight of your long-term goals and destination.

And that's why he was so fervent — fervent to the very end — about securing the future of the institutions and the individuals that he loved: Roberta, his children and grandchildren, and, I suspect, everyone in this room.

Lesson Four:

I'm not quite sure how to describe Lesson 4, so let me tell you a story that says something about David's concern for the spiritual and physical well-being of his friends, his take on the Establishment Clause, his unyielding optimism, and his culinary rectitude.

One Friday morning as I was about to leave for work, I felt sick and feverish. A few minutes later, I could barely move. A virus. Carol went to work. I phoned in sick. I collapsed on the sofa, inert; I don't think I stirred for many hours. At around 5 PM, I awoke. The fever had broken and I felt a little better.

I thought a little chicken soup was in order, but that required going to the store to buy a chicken. I did that, and when I got home the phone was ringing.

It was David.

"Where were you," he asked. "I called fifteen minutes ago to see how you were doing and there was no answer."

I told him I had gone to the store to buy a soup chicken.

"Did you get kosher?" he asked.

"David," I said, it's 5:30 on a Friday evening. The kosher butchers are closed."

"You could get frozen."

So, I guess Lesson 4 is, I'll continue to think about what David would and wouldn't do; I'll try to analyze problems from the inside out; I'll try to keep my eyes on the horizon; I'll buy frozen kosher chicken when fresh isn't available, and I'll never win an argument with David.

Remarks by Judge Stanley Marcus

There's absolutely nothing that could have kept me away from this event, this celebration of the life of someone who meant so much to me—a celebration by an institution that meant so much to him. As this is being read for me by Dean Gerber, I'm attending a Judicial Conference that my court scheduled more than a year ago. For this I would have played hooky, even though I'm on one of the panels, but I heard David's voice in my head, telling me that I can't, that our public responsibility trumps everything. I hear myself saying, "Come on, David." But in the end, as usual he gets the best of the argument.

So I am indebted to Dean Gerber, someone else who David nurtured and loved, indebted to him this time for reading these remarks

for me. And I realize that I've embarrassed him, but that's the truth of the matter, David Trager loved him.

When David Trager was United States Attorney, his family suffered a tragic loss and David was sitting Shiva, the seven days of mourning observed by Jewish families. It just so happened that shortly before, the U.S. Attorney's office in the Eastern District of New York — David's office — had brought legal action against Barton's Candy Company. The charge in essence was that there was "shmutz," rodent excrement, maybe other stuff in some of the candy. Barton's was being defended in all of this by one of David's dearest and oldest friends, Howie Udell. Howie later recounted that as a young lawyer his first really difficult question was what to do about the fact that when he came into the Shiva house to pay his friend a Shiva call, there was David consuming with apparent joy and typical Trager gusto, a piece of candy taken from a Barton's Candy box sitting on a coffee table in front of him. Howie decided that the thing to do here was nothing; it didn't really mean much because David loved everything good and sweet in life. And Barton's Candy, whatever imperfections it may have had, was no exception.

The truth is David just loved life, and everything good in it — good music, good food, good people, this wonderful law school, and justice. In 1945, when David was eight, he saw his grandmother's reaction when she learned that her son — David's uncle — had not survived his deportation from Vienna to a concentration camp. I think that moment of witnessing his grandmother's anguish shaped David for life. He hated injustice — just hated it. Couldn't abide it. And he loved America with every cell in his body. The idea of America was coursing through his veins, this land that has set its sights on freedom and justice for all. He spent a lifetime enthralled by the beauty of our country and the genius of its Constitution. He shared in its determination to take this remarkable experiment in human dignity to an even higher plane.

As so many people here today know, David was sweet as sugar. He was a very kind man and as devoted a husband, father, grandfather and friend as anyone who has ever walked this earth. He had heart in every sense of the word, and plenty of it. As far as I could tell, he was

undeterred by fear of any kind. This showed throughout his life and in the way he battled death. He kept on caring about everyone and everything. We taught a class together every year on Religion and the Constitution. Even this last semester, greatly weakened by illness, David taught the law and he was brilliant — always just plain brilliant, and never for a moment distracted from his lifelong meditation on justice. It was a thrill and a privilege to listen to David think. And witnessing his courage, and Roberta's, and the bond between them, could make you proud to be a human being.

You know, I can't begin to list half of what was wonderful about David, and most of you already know. But one thing deserves special mention — his integrity. David was the very soul of integrity. He pursued the right as God gave him to see the right, and if this meant going against powerful people, so be it. David managed to live and die with his integrity one hundred percent uncompromised. This undoubtedly cost him plenty in the political minefield he inhabited. But it made no difference — he did what he believed was right, period. Stiffnecked? Yeah. Exasperating? Absolutely — to some, some of the time. But David was what you call in Hebrew a *tzadick* — a truly righteous man. As Alfred Lord Tennyson put it when he spoke of Ulysses at the end of his days, “To strive, to seek, to find, and not to yield...” That was David Trager.

David shone like a brilliant star his whole life long. As we celebrate the life of our beloved friend, and say farewell, I think of these words spoken by Juliet about Romeo:

*And when he shall die
Take him and cut him out in little stars
And he will make the face of heaven so fine,
That all the world will be in love with Night
And pay no worship to the garish Sun.*

Like you, I will never forget David. He was an extraordinary human being. God really made something special in him. His life was a rare gift to this law school, this city, this country, and to all of us who loved him.

Remarks by Chairman of the Board of Trustees Stuart Subotnick

Now that we are in the throws of playoff season for basketball and hockey, the roll of an impact player becomes more obvious. In the history of Brooklyn Law School and well into its future, no one individual will have made more of an impact than David.

Putting aside his 11 years of teaching, David was dean for 10 ½ year and on the board for an additional 17 years. His value to the school was not the number of years he served, but the quality of what he accomplished and set in motion for future generations.

In demeanor, you wouldn't call David Beau Brummell; however he was deceptively bright, dedicated and outwardly conservative (even in politics). Behind that façade was a calculating risk taker as it related to the school. He set in motion the transformation of the Law School, from a local borough institution to a highly regarded national School of Law.

He believed that in order to obtain greatness the school needed to expand and strive to attract higher quality teachers and students. He was a steadfast proponent of acquiring residential facilities in the Heights and expanding the school facilities by building an annex. He was also a proponent of building a residence hall for students which was accomplished by his hand-picked successor, President Joan Wexler. His quest for additional student residential facilities never ceased. This vision was consummated in Feil Hall.

David also strove to make the institution financially sound by trying to enlarge the endowment fund. In fact, David took it upon himself to manage a small separate portion of the fund and took pride in outperforming the professionals on a consistent basis. Although years ago it took some convincing, conservative David even went along with limited alternate investments such as hedge funds.

David had a lasting effect on the Board of Trustees where he sought to bring in members who would possess different career backgrounds that would help the school expand and move to higher grounds. Joan Wexler continued the pattern which accounts for all of our members today.

David's actions and vision has affected every aspect of the Law School. He succeeded in raising the bar through action and uncanny foresight in just about every facet of the school, including faculty, students' curriculum, Board of Trustees, facilities, endowment and leadership.

This institution should be referred to as the "House that David built." I personally, and all who he touched in life, sorrowfully miss him. Thank you.

Remarks by Hon. Carol Bagley Amon

As is evident from the number of assembled speakers, David Trager led a full, active, and rewarding professional and private life. At David's funeral, his son Josiah described his father's time on this earth and wisely observed that many people, if offered that same life, would gladly take it, even knowing they would die at the relatively young age of 73. We are here to remember that extraordinary life — each of us has a piece to tell of it from our own connection to David.

I'll speak briefly to two parts of that life, informed not merely by the written record of those events, but by personal remembrances. I was fortunate to share with him his time as U.S. Attorney for the Eastern District of New York and his service on the bench of our Court.

I first met David in 1974 in the U.S. Attorney's Office. Prior to David's arrival, I had been a Special Assistant U.S. Attorney on detail to the office from a Justice Department Task Force. He did not know me and was taking it on faith from others in the Office that I should not be a casualty of his plan to make the Office a non-political place where merit, not backroom local politics, got you the job. David had many personality traits. He was brilliant and he was shrewd, but he was painfully honest and direct. And as successful as he was in rising in the ranks of such important organizations as the Federal Bar Council, it was not because he was a schmoozer. I was present in his Office to be sworn as an Assistant U.S. Attorney. After administering

the oath, he turned to the assembled assistants and said: “I don’t know Carol — if anyone wants to say something about her, go ahead.”

After that, thank God that I did get to know David and I could not have asked for a more loyal and supportive boss, and later for a better friend and colleague. The U.S. Attorney’s Office was a friendly environment for women. David was one of the first to permit women attorneys with young children to work part-time. He supported the family life of his assistants.

Indeed, I will never forget completely scandalizing David. Just days after my first child was born, I was in line at the movies with my husband. I turned and saw David and Roberta behind me. David was horrified that I was out of bed and had left the baby with a nurse and gone to the movies. I was so intimidated and feeling so guilty that I contemplated going home to that screaming little thing that I had paid good money to leave.

In addition to recruiting talented attorneys, David’s goal as U.S. Attorney was to prosecute cases that made a difference, not just to rely on the easy bread and butter of cases laid at our doorstep by law enforcement agencies. The narcotics cases prosecuted did not simply involve couriers arrested at an airport, but international narcotics conspiracies involving kilos of drugs. Drug kingpins were extradited from foreign countries; assistants took depositions all over the world. David brought important white collar crime cases and bravely went after corrupt politicians whose political friends knew how to hold a grudge.

After leaving the U.S. Attorney’s Office, David had an active career — most prominently, he was, of course, Dean of Brooklyn Law School. In 1993, he returned to the Eastern District of New York, this time as a district judge. Many of his former assistants were already here: Ed Korman, Ray Dearie, Allyne Ross, and me. Reena Raggi was on the bench as well, but she had been hired by Ed Korman. That inconvenient truth did not prevent David from claiming her. After all, if he hadn’t made the office the place that it was, someone with her credentials would never have applied. And we were all given to understand that we could not have possibly made it to this point in life had we not worked for him. There just might have been more truth to that than we would have ever admitted to David.

On the bench, David wasted no time in building a reputation as a brilliant jurist. He was conservative on criminal law issues, until, of course, it came to sentencing. There he exhibited that wonderful Irish trait — *rachmones*.

In addressing his civil docket, he prided himself on being able to cut through the dense thicket of verbose, extraneous arguments that too often attend District Court motion practice to get to the heart of the matter. He was possessed of an extraordinary business sense and common sense that informed his opinions.

To give but one example, in his decision in the Cipro antitrust litigation, he conducted a thorough analysis of the alleged anti-competitive effects of a settlement between the patent holders of Cipro and the manufacturers of generic Cipro. As a part of that settlement, the generic manufacturers were paid a sum of money for not entering the market before the patent expired. In finding that the settlement did not violate the Sherman Antitrust Act, David illuminated the tensions between patent and antitrust law, stating a view that has since become embodied in Circuit precedent.

David was at his best when, to borrow a line from Robert Frost, he took the road less traveled by. In the Lemrick Nelson case, when faced with the need to replace a juror after trial had begun, David came up with a common sense solution to achieve a balanced jury whose verdict, whether guilty or not guilty, would be accepted by the community. Both the prosecution and the defense agreed to his proposal. He was reversed on appeal.

David was independent. Sitting by designation in the Second Circuit, he wrote a compelling dissent in *U.S. v. Capers*, where he disagreed with the majority's conclusion that a defendant's statement had been taken in violation of Miranda. After carefully analyzing the leading Supreme Court authority on the narrow issue presented and, as any good district judge would do, chastising the majority for reaching its result by engaging in its own fact finding, he concluded that there had been no Miranda violation.

David was by no means, to use the favorite term of our friends on the Hill, an activist judge. He did not ignore precedent. He simply did what he thought was correct within the law and did it without regard

to whether it was the safe thing to do. And of course there was that pride. On the rare occasion that David was reversed, his view was that that miscarriage of justice had occurred because the members of the panel either had no common sense or no firm grasp of the law.

David's reputation as a jurist extended beyond the confines of the Second Circuit as a result of his work on the Criminal Rules Committee of the Judicial Conference and his service as a visiting judge on the Ninth and Eleventh Circuits. When I have met judges from other Circuits who have worked with him, their praise for his intellect and personality has been both genuine and abundant, prompting me to remark proudly: "Oh yes, David and I are good friends."

Being separated by death from those we need and love is sadly beyond our control. Memorial services such as this are not really for the person being remembered. Not to proselytize, but I suspect that David has now come to learn that the Shiksa was right and that he is far happier than anyone in this room. These events are for the living and for the lessons to be learned from celebrating the life of a wise person who well used his time on this earth. So do as David would do: enjoy each day; approach your life's work with pride and enthusiasm; spend time with your family; and love and cherish your friends. Above all, be remembered, as he was, not just as a good judge or a good lawyer, but as a good person.

Remarks by Professor Joel Gora

David Trager was a great man. He was a great man because he did the large things in life so well, and he was a great man because he did the small things in life so well also, and they are often more important than the large ones.

He did not look like a great man, though he had a warm smile and a hearty laugh. He did not particularly dress like a great man, though he could look natty and elegant in a tux at a Federal Bar Council dinner. His briefcase, at least from the time I came to know him, tended more toward the matched luggage from Duane

Reade than anything carried at Brooks Brothers or Crouch and Fitzgerald. It was a good stroke for the cause of business accessories fashion when Brooklyn Law School developed a line of fashionable LLBean style canvas tote bags that David could use to carry his papers and files.

The large things in life that David did so well are so well known, there is no need for me to dwell on them. U.S. Attorney, Law School Dean, Federal Judge. Quite a hat trick. To have been just one of those things in a legal and professional career would have been, as we said last week at our seders, *dayanu*, more than sufficient. To have done all three was the mark of a remarkable person who left an indelible imprint on the three vital institutions he served so well and graced so admirably.

As head of the United States Attorney's office in the 1970's, David brought a new standard of professionalism, excellence and integrity to that office and helped transform it into the model it is today. And he paid dearly for that principled and honest service by seeing the judgeship that he so yearned for and rightly deserved be denied to him because of that integrity.

But the judiciary's temporary loss was most decidedly this law school's great gain, because David turned his remarkable vision, energies, intelligence, good judgment and — there's no better word: *sachel* — to helping make Brooklyn Law School the highly-regarded institution that it is today. In ways large and small he worked constantly to make this the best law school it could be. There were of course the big ticket items like the recruitment of top faculty, the vitalization of fund-raising and development, the enhancement of the curriculum, major expansion of the law school's main building, and, of course, the creation of a real estate empire.

There were the small things also. David knew that a good law school, like a good army, travels on its stomach, as they say. So, all of a sudden, food, snacks, *h'orderves*, dinners became important components of BLS events. It wasn't just a reflection of David's personal affection for cuisine — though I happily recall the occasional impromptu lunch forays to Jack's Deli, a hole-in-the wall emporium on Court Street with great corned beef and good hot dogs, one of

which David would polish off each meal as a “forshbice” before the corned beef sandwich. The owner had a son who wound up attending Brooklyn Law School. No kidding. Food became so important at law school events that on one occasion, when we brought pre-law advisors from the top colleges and universities to the campus to show off all of our accomplishments, and we wined them and dined them for three days, I found myself saying, in the course of pinch hitting for Joan and making a few farewell remarks at the closing dinner, “Now you know why our motto is: Brooklyn Law School: A good place to study, a great place to eat.”

David’s great attention to detail went hand-in-hand with his remarkable ability to understand what motivated and concerned all of the disparate groups and individuals whom a dean confronts and encounters on a daily basis. It seemed he had almost a kind of political and social x-ray vision, and if he could determine what was of concern or motivation to someone or some group he could figure out ways to accommodate and reconcile their interests with his concerns and goals. One of his strong suits was that he wanted to hear all sides presented before he reached a decision.

During his tenure as dean he developed a number of programs and opportunities which he insisted be available to all employees equally, not just to the faculty. So, our pension plan has one of the highest employer matches of any plan in the country, and each employee gets the same percentage of their salary set aside for their retirement. Our generous dependent scholarship program, which has benefitted the children of so many of us in the BLS community, awards the exact same stipend to the child of a secretary as the child of a dean, an award which David knew might be a whole lot more helpful to the former than to the latter.

Having done so much to make the law school a better place, his time finally came to ascend to the bench, and begin the third leg of his extraordinary professional career. He brought his great love for the law and his great store of common sense and good judgment to bear on everything he did as a judge.

He handled some of the most difficult issues of our times — trying to insure a diverse and representative jury in the trial arising out of the Crown Heights riots of the early 1990's, trying to determine the extent to which the federal judiciary should police the war on terrorism — and he did so with care and attention both to legal doctrine and to the real world consequences of what courts say and do.

Having touched upon the great things David did for his community and his profession, I would be remiss if I did not conclude my remarks by recalling a few of the wonderful things he did for me and my family. For, as I said, David's greatness as a person was as much, if not more, in the little things he did for people as in the large things he did for institutions. I am just one of the countless people in this Moot Court Room and beyond whose personal or professional lives David mentored and nurtured.

In the late 1980's my elderly father was in the hospital in Los Angeles in a coma. I hadn't seen him after he took ill. My Southern California undergraduate alma mater, Pomona College, was holding a pre-law day fair and inviting recruiters from law schools across the country to attend. I don't think Brooklyn had ever sent a representative there before and I don't think we've sent one since. But that year David decided it was very important to send someone — namely, me — to recruit for the law school, which I did. But, of course, David's primary purpose was to help get me out to LA to spend a little time with my father before he died.

In 1992, I had been a heavy smoker for over 30 years, a three-pack a day habit. My office was just down the hall from David's, and in those days you could smoke in your office. So the smoke and the chronic coughing emanating from my office were obvious to everyone. David, who had lost another friend to lung cancer, called me into his office one day and told me that the school was going to pay for a quit smoking program to come on campus and hold weekly sessions for all BLS employees who wanted to kick the habit. But he made it quite clear to me that I was the employee he most expected to sign up for that program and that I better succeed in it. About a dozen of us enrolled in the program and, somehow it clicked for me and six weeks later I stopped smoking. That day was

February 12, Lincoln's Birthday, which I came to think of as my own emancipation day from smoking. After that, on February 12, each year, I called David to remind him of what he had done for me and to thank him for caring so much about a friend.

Finally, a few years later, my mother passed away. After my family and I had come home from sitting shiva in California, David, who was on the bench by now, called and asked if we had any plans for Passover and would we like to attend a seder at the Trager home. That was something we had never done before. He didn't have to make explicit what his wonderful and decent gesture was doing. I had become an orphan, and he wanted to make sure my family and I had somewhere to go and a family to join for the seder. That was David Trager.

Last week Ann Ray, Susannah, Zach and I went to seder at David's home. Roberta put out a fabulous dinner, the matzoh ball soup was as good as ever, and Josiah did a great job of inheriting David's mantle of leading the services, and it was wonderful to be with all the Tragers and family and friends. But, of course, David was not there, except in our hearts, and we all missed him so very much.

Remarks by Professor Emeritus William Hellerstein

An Article III Judge with a shopping bag — A person of learning, achievement, wisdom, and humility. This was my dearest of friends, David Gershon Trager. The void left by his passing cannot be filled. But words of tribute and remembrance, perhaps can provide a drop of comfort to those of us who had the good fortune to be part of his universe.

For me, it began in September 1959 in the first week of my first year at Harvard Law School on the first floor of Shaw Hall, a residence hall and one of the ugliest buildings ever designed by the renowned Bauhaus architect, Walter Gropius.

I was walking down the hall to the bathroom when, from behind the door of someone's room, I heard the beautiful voice of the great soprano, Renata Tebaldi, singing Liu's aria from Puccini's last

opera, *Turandot*. I knocked on the door and David opened it. I inquired if it was *Telbadi*. He said that it was and invited me to listen, having first conducted a brief inquiry into my interest in opera. His equipment was the old double reel tape recorder, familiar to those who have watched WWII spy movies.

After we graduated in 1962, I went to Washington and David returned to New York and we did not see one another again until 1964, shortly after I too had returned to New York to practice. We met one day on the street and David told me that he was working for Berman & Frost, a well-known personal injury firm; he was not especially enthusiastic about the job — he said he would have preferred a real estate practice — an aspiration that was fulfilled in a rather off beat way, so to speak.

Around 1966–1967, our next encounter had a greater substantive component. As appellate counsel at the Legal Aid Society, I had launched several challenges to various provisions of the first Rockefeller drug laws. The cases reached the New York Court of Appeals at the very time that David was law clerk, together with Ed Korman, for Judge Kenneth B. Keating. I learned of that when I appeared to argue the first of those cases. In each, Judge Keating wrote the opinion holding the statutes unconstitutional — and we know, of course, that it is the judge, not his law clerks, who determine the outcome of the case.

In the ensuing years, I followed David's career from afar as our meetings were infrequent. However, once David became Dean of the law school, I was already in place as chief of the Legal Aid Society's Criminal Appeals Bureau, our relationship became more extensive. I remember calling him to congratulate him on his ascension and he said that we would probably be speaking more often. At the moment, I did not appreciate the true meaning of that prediction. But then the phone began to ring. The Dean was calling to urge that I hire a particular student, usually one who did not have sterling grades but, as David put it, had "other qualities," that would fit well with the requirements of my office. I accepted his recommendations and none of those hires ever disappointed. To say that David had a keen eye for talent would be an understatement.

In the early 1980's, I began to hear of David's attempts to transform the Law School. We also began to see a great deal of each other as we served on several committees at the City Bar Association. In April 1985, we were serving on the Association's Executive Committee; it was also a time when, after 21 years, I felt I should be leaving the Legal Aid Society. When I mentioned that to David one evening, he suggested that I might enjoy joining the BLS faculty.

After discussing matters with my wife, Michael, I decided to seek an appointment to the faculty. Hence, from June 1985, when I came on board, until David's departure for the federal bench, I no longer had to observe from afar David's magical transformation of the Law School. I was now part of it, hopefully as a contributor in some way.

I am sure that others will speak today of David's great work as Dean of the Law School that he so loved. Although I was sorry to see him depart, one of my life's happiest moments was attending David's swearing in as a federal judge. I knew what it meant to him and the frustration he experienced over the delay in the process — caused in no small way by his courage and integrity in exposing certain unsavory activities of powerful politicians.

David's greatness as a judge will also be the subject upon which others will dwell. His obituary in the *New York Times* mentioned his role in the Crown Heights and the Arar cases as among his most significant. For me, his masterpiece was a 72-page decision in *Espinal v. Bennet*, granting a writ of habeas corpus for a defendant serving 53 years to life for a double homicide because the prosecution had withheld critical evidence from a defendant who may well have been innocent. The decision was affirmed unanimously by the Second Circuit.

As the years went by, our friendship deepened. Our mutual love of the opera formed that day in September 1959, was the matrix of our relationship. We discussed what operas to see and Michael and I dined frequently with Roberta and David before a performance at the Met. In fact, we had planned such an evening in early January, a plan brought short by David's death.

When I became seriously ill a year ago February, David called regularly to offer encouragement and support. It was during that time that David himself receive the diagnosis of what would be his fatal illness. Nonetheless, his concern for me remained constant.

Despite the awful diagnosis and the toll of chemotherapy, David stared his fate in the eye: he went to the opera, he worked his cases, and he extracted from his days as much joy as possible. His love for Roberta, Josiah, Mara, Nomi, and his grandchildren and they for him gave him great sustenance in the most trying of circumstance. Knowing David for more than a half century, there is no replacing the void he has left in my life. I think of him whenever I listen to or attend an opera. On the day of his funeral, I returned home and played my recording of Turandot, the one with Tebaldi singing Lui's aria: that is how it began and that is how it ends.

David was my friend and I am all the much better for it. I hope that somewhere Madame Tebaldi is still singing to him.

Remarks by Hon. Ramon E. Reyes Jr. '92

I want to thank the administration and Judge Trager's family for asking me to speak today on behalf of the Judge's former law clerks.

If you ask any of his former clerks what it was like to clerk for Judge Trager you'll likely get a similar response. It was like serving as a sailor on the HMS Bounty, although the work was much, much harder, the discipline far more severe, and the pay not nearly as good.

Seriously though, I had the privilege of being one of Judge Trager's first law clerks, during the 1994-1995 term. Clerking for Judge Trager was for many, if not all of us, the experience of a lifetime. The opportunity to learn about the law, the administration of justice, and what it means to be a judge from one of the best that ever lived. The opportunity to witness the judicial oath of office come to life on a daily basis. It was a very special experience, and one that we all cherish.

Of course we all worked hard, spending long hours in chambers, especially during the early years. But Judge Trager was always right there beside us. He was a tireless worker, who would often match his clerks hour for hour. Leaving for the weekend with two or three canvas bags full of draft decisions and briefs, only to come to Chambers on Sunday to work a full day, often with his beloved white lab Norton in tow. Even after he became ill, he attacked his docket with the same ferocity, clarity of thought and precision as he had previously. He was always concerned about his work just as much as he was about himself.

Judge Trager honed our writing skills, tested our legal analysis, but most importantly, he taught us that ultimately cases are decided based on the facts. He would criticize each of his new clerks as being too focused on the “law,” when what he was really interested in was the facts — both in the cases before him and in the decisions we read and cited as precedent. The Judge would often repeat that “on the district court level, 98% or 99% of a case turns on the facts, on the circuit level, maybe it was 95%.” He always had us delve into the fact section of a decision much more than we expected and if we didn’t have answers in the parties’ papers, those were often the questions he asked the lawyers during oral argument.

Just Trager would often criticize his clerks, even me, for not having, or at least not using, common sense. As he memorably would say to us, “use your saykhel.” For you non-Yiddish speakers that’s “S A Y K H E L,” or common sense. Although the Judge was exceedingly brilliant, with firm command of many areas of law and procedure, intellectual property, complex commercial litigation, evidence and conflicts-of-laws to name a few, I believe that more than anything he prided himself on his common sense, and it was this common sense that guided him in many of his decisions.

He was imminently practical — he did not care about appearances — what people wore to court, how nicely bound the papers were, etc. He was all about substance and cared not for form. His common sense and practicality meant that he had little patience for the “nonsense” of some attorneys who appeared before him. And this common sense practical approach led him to cut right to what

he saw as the heart of each case, with the precision of a neurosurgeon. And he always did so respectfully. He never once raised his voice or displayed anger; at least not in front of me.

For us, Judge Trager was always the professor, teaching his clerks as if we were students at his beloved Brooklyn Law School. I'm sure each of his former clerks can recall going over a draft of a decision, or reviewing with him the arguments raised in the parties' papers, and being asked in the Socratic fashion, "this argument is ridiculous... because?," or being summoned from your desk to come to the courtroom to observe an oral argument or cross-examination of a witness in one of your co-clerk's cases just because the Judge knew that it was something you needed to see. That was his way.

Such was the experience of a Trager law clerk. You learned how to think clearly, exercise common sense, focus on the facts, and write well. He was a great boss. Not quick to anger, always constructive with his criticism, always supportive, and he taught us how to be better lawyers.

But more than that, I think we all learned from Judge Trager how to approach cases from the proper perspective — with respect for the law, the judicial process, the litigants and the lawyers, and with an overriding sense of fairness and determination to do justice. Although it may sound cliché, Judge Trager was committed to seeing that justice was served in every case he handled, and that the litigants and lawyers were treated fairly, with decency and respect.

Whether it was working hard during voir dire in a high profile, racially-charged criminal case to ensure that the jury was representative of the community, or taking the time during sentencing to find a way to downwardly depart from what he considered to be draconian sentencing guidelines as applied to drug couriers, or spending the time to make sure that every pro se litigant left his courtroom knowing that their case was handled fairly and properly, or by directing his clerks to prioritize habeas petitions and social security appeals, Judge Trager did his best to fulfill his oath to "administer justice without respect to persons, and do equal right to the poor and to the rich," and he never failed in that regard.

I remember one case in particular. A rather straight-forward mortgage foreclosure action involving a multi-unit residential property in Brooklyn. The facts and the law were clear, the bank was entitled to foreclose. Nevertheless, Judge Trager rolled up his sleeves and did his best to settle the case by reworking the mortgage so the hard-working family could keep the property. The bank reluctantly agreed to settle, and it seemed as if the family would too. Unfortunately, the family's lawyer was set on turning this straight-forward case into some sort of discrimination action, and the family followed his advice. The case didn't settle, even after 3 settlement conferences, and the property was foreclosed. I know that case pained him greatly; and that shows just the type of person he was. I'm sure each of his clerks could tell a similar story of how Judge Trager went out of his way to ensure a just result in a difficult case.

And lest his clerks fret to him that what he wanted to do might be reversed on appeal, he would remind us that he had to live with himself, not the Second Circuit. He believed deeply in our justice system and the oath he took when he became a judge — and he taught us to have confidence in judges, juries and lawyers in both civil and criminal cases; he would tell us, “as long as the case was well-managed by the judge, and everyone was honest and took their roles seriously, you could have confidence in the outcome.”

The Judge also instilled in many of us a desire to do government service — and he mentored many of us after we left chambers, providing us with insightful guidance as we continued our legal careers. We will miss that advice, along with the interest he showed in our personal lives, and those of our families.

Based on what I've said so far, you may think that we wouldn't have any complaints about our clerkships with Judge Trager. You'd be wrong. You see, in addition to criticizing us for not using our “saykhel” and not focusing on the facts, he would also criticize us as being “bleeding heart liberals.” Which was often not the case. Given his self-avowed political leanings, you'd first have to question why in the world he'd hire us if we were “bleeding hearts”? Moreover, such a criticism is hollow, coming from a judge who never met a decision from the Commissioner of the Social Security

Administration that he liked. I remember two social security cases in which I recommended that he affirmed the decision denying disability benefits. In one he remanded for further review, in the other he granted benefits outright. If you looked at his record in such cases, you'd see that the claimants had a batting average of over .750. When it came to civil cases at least, Judge Trager's heart could bleed with the best of them.

I'm sure I speak for all of his former clerks when I say that we are all grateful and thankful for the opportunity to have clerked for and been mentored by Judge Trager. We learned so much from him — and we all miss him greatly.

Speaking for myself, as I've said publicly several times before, I have so much to thank Judge Trager for. My clerkship with him literally changed my life. As I've said before, while a student at Brooklyn Law School, I struck out with 15 federal judges while trying to obtain a clerkship. After I graduated, Judge Trager gave me a shot to work for him based on recommendations of Joan Wexler and Maryellen Fullerton. That clerkship opened doors for me that would never have been opened otherwise. But for my clerkship with Judge Trager, I don't think I would have become an Assistant United States Attorney, let alone a United States Magistrate Judge. I will always miss him.

Remarks by Frank H. Wohl

Judge Trager was a valued leader, supporter and friend of the Federal Bar Council over many years. He was President of the Federal Bar Council from 1986 through 1988. Even after he went on the bench, Judge Trager continued to be an enthusiastic participant in Federal Bar Council activities. He served on our Winter Bench and Bar Planning Committee and the Inn of Court Executive Committee. He attended many of our Winter Bench and Bar conferences, Fall Retreats, Law Day Dinners and Thanksgiving Lunches. Most recently, he chaired the Nominating Committee during 2010-2011.

With his experience as a judge, teacher, private practitioner, and U.S. Attorney, Judge Trager was especially valued as a mentor of young lawyers. He moderated and appeared as a panelist on many of our CLE programs and participated in our Inn of Court programs.

Judge Trager was very generous with his time, informally meeting with young lawyers, as part of the Federal Bar council's First Decade Committee Lunch-with-the-Judges Program, as well as in informal discussion groups at our various functions.

I personally valued Judge Trager's advice. When I became President of the Federal Bar Council, one of my first calls about how to fulfill this responsibility was to Judge Trager. He was, characteristically, very gracious and invited me to his chambers to give me his thoughts. I remember thinking, as I was talking to Judge Trager just a few months ago, that even though he knew his medical condition was very serious, he remained enthusiastic about doing everything he could to help the Federal Bar Council.

As I left his chambers, I was hoping that I would have many more opportunities to spend time with Judge Trager. Sadly, that will not be. All of us who are involved with the Federal Bar Council will miss him enormously.

Remarks by Professor Neil B. Cohen

Good afternoon. Like Dean Gerber, I had no small difficulty in preparing my remarks for today. David Trager was such a big part of my life that it is difficult to reduce that impact to a few minutes of remembrances. So I took some time off from thinking about what I would say to clear my mind with a crossword puzzle. As you probably know if you do crossword puzzles, people who construct them often need to resort to "non-standard" words in order to make everything fit together just right. The result is that there are some words that we know only as "crossword puzzle words."

One such word that appears in puzzles from time to time is "oner." While no one seems to be able to find a record of that word actually having been used outside a puzzle since 1920 or so, its defi-

tion can still be found in the dictionary. A “oner” is “a unique or extraordinary person. One-of-a kind.” Well, I think that we should revive that word from its retirement, because we have a good use for it. David Trager was a oner.

At first, that might seem incongruous. After all, there were many David Tragers. There was David Trager the law clerk, David Trager the young trial attorney, Professor David Trager, United States Attorney David Trager, Dean David Trager, and finally Judge David Trager. Of these, the only one I saw at close range was Dean David Trager, so that is the David about whom I will speak. More importantly, though, I will be speaking about another David Trager — my friend David. That is the David Trager I will miss most. You can replace deans, you can replace judges, but you can’t replace friends.

Yet David’s various roles can’t easily be separated — because he was always the same person regardless of role — and what a person that was.

Quite simply, David was the most self-confident, least self-centered person I have ever met. He was supremely self-confident, but not egotistical. He didn’t think that his solutions to the problems of the day were necessarily the best solutions (although they invariably were) — rather, he simply refused to believe that a problem existed that he could not reason through and devise a solution for. The same confidence he would bring to the table to solve a legal or organizational management problem was present when the issue was international diplomacy or mechanical engineering.

As I said, though David was self-confident, he was not self-centered. With David, it was always about the task, the challenge, the problem, but not about him. It is not quite right to call David a problem-solver, although he was a problem solver extraordinaire. Many people can devise a solution when confronted with a problem. David’s special talent was seeing opportunity. Where others would be self-satisfied or complacent, he could see the greatness lying just over the hill and devise a path to get there. But he wouldn’t go there alone; rather, he would convince us that the path was ours — ours to blaze and ours to travel.

David's method of leadership was "no frills." He was not a gifted public speaker; God knows he wasn't a snappy dresser. So he didn't lead by charm. Rather, he led by example and by substance. Charm, like beauty, is only skin deep, but substance endures.

But there was more to David than being a leader. He was powerfully smart, and loved to discuss and debate a wide variety of issues. He took ideas seriously, and did not take disagreement personally. David liked to talk about politics and public policy, and we debated such matters non-stop for over 20 years. It's possible that we may once have agreed about something in that realm, but it certainly didn't happen often. Instead, he would start a conversation by telling me something provocative — a favorite was his view that abolishing rent control would cure everything from unaffordably high rents to the common cold — and we'd be off to the races. I'm not sure that I ever convinced him of anything, but I certainly learned a lot about my own views by trying to advocate them to a thoughtful person who didn't share them.

But I don't want to leave a misimpression about David's viewpoint on things. There were some surprising aspects to David's world view. For example, he was quite an environmentalist. I'm not referring to his legendary service as East Hampton's self-appointed turtle protector. Rather, I'm thinking of David's deep commitment to recycling. But David didn't recycle soda cans or aluminum foil or newspaper, like other people; what David recycled was speeches. He thought it was wasteful to throw away a perfectly good speech after only a single use. Rather, one speech, properly taken care of, could provide a decade or more of good service.

David was very careful to not give the same speech more than once to the same audience, but we faculty members heard them all, again and again. Indeed, after a while, we could probably deliver them better than he could. But there was one speech in particular that never stopped making an impression on me. It was the first speech I ever heard David make over 25 years ago. The occasion was the convocation for the entering class, and I was attending as a visiting professor who would be spending a semester at BLS before

(I thought) returning to my home institution. It was a speech that all who were here in the Trager era will well remember — the mentor speech.

With Michael's help, I was able to discover yesterday that this was actually the world premiere of the mentor speech. The speech was quite simple. It was about the importance of mentors; about finding a mentor when you are young, and returning the favor by being a mentor when you are more experienced. But it got me thinking, and gave me an appreciation of the fact that I had been the beneficiary of some wonderful mentors from whose mentoring I had gained great benefit, and that I had not been insightful enough to recognize it. It made me more conscious of the great benefits I had from having good mentors, and more determined to return the favor to the next generation.

What I did not realize, though, was that I had just met my most demanding — yet most patient, and certainly longest lasting — mentor. Before my semester visit was over, I figured out that David was a leader who made great things happen and that I wanted to be part of them; as a result, my one-semester drive-by visit has now become a quarter-century commitment. It took me longer, though, to realize that David was as much a mentor as he was a leader, and a very special type of mentor.

David did not want to create clones, people who would think and act the same way he did. What David did was to recognize a person's unique attributes — often even before the person did — and by a combination of nurture and nudge help that person develop those attributes and become better for it. David's pride was not in creating yes men and yes women but in contributing to the growth of people who had their own minds and would blaze their own trails, and, not incidentally, challenge him and make him better.

The world would be a better place if there were more David Tragers. But then again, it couldn't happen. As I said earlier, David was a oneer. We can't expect replicas, so we should be thankful that we got the gift of the original. David, my friend, thank you.

Remarks by Roberta Weisbrod

On behalf of myself and our family I want to let you know our appreciation for this event, for the speakers — Michael, Stuart, our Chief Judge Carol, Joel, Neil, Ramon, Frank, and Joan — and for all who came to participate. In our family we have relatives from Westchester and New Jersey and Israel who came to be here today. Thank you for all for being here.

Our whole family life was intertwined with the law school: David's start of teaching at the law school coincided with our getting married. The law school has been a constant in our lives. There have been friendships made over the years; dinners and lunches and spectacular holiday parties; symposia and receptions.

The hardest thing I have to do today is hold back from naming names, because I would keep you here too long and I would tend to only name the old-timers who I knew better. For the faculty and the staff of the law school I want to look each of you in the eye and say thank you. Thank you for the dedication that you have given to your profession, to the students, and to the school that David cared so much about. I personally want to look you in your eyes and say thank you to you, and to your spouses, for some great conversations — conversations one could count on being thought provoking and fun. And I want to say thank you to our friends for your continuing friendship.

About naming names I'll make an exception of Joe Crea — for taking David in hand — and for setting the tone of warmth, for being an example of the school, how it provided and provides opportunity to the poor, the powerless, the immigrant, and the minority.

Finally I want to thank the Board — for their vision — which could be loosely translated as — going along with David with his ideas on how to raise the quality of the school by enhancing the academic life and upgrading the physical facilities. I have known only two chairmen of the board and they were both superlative — the courtly fine and fun of blessed memory Paul Windels, and a person that when I think of him, I think to myself that this world is not a bad place if it could produce such a fine person as Stuart Subotnick. I behalf of my family please accept our heartfelt thanks.

Remarks by President Joan Wexler

I've already reached for the phone to call David several times. It will come as no surprise to you that David had opinions about pretty much everything and I often wanted to know what they were. You might think that, in my case, that only covered issues related to Brooklyn Law School. But, that wouldn't be so.

Let's start with what I should wear — the blue suit with the silver buttons or the red suit with the gold braid collar? David always had a great deal to say about what I wore. When our offices were next door to each other, this enabled him to evaluate my attire almost every day. He told me when he liked what I was wearing and, not being shy, when he didn't. On the whole, David had very good taste. His expression when he was really impressed was that I was “farputzt.” Many people say that David was a brilliant judge, a talented lawyer, and an independent prosecutor. Many people say he could have been an architect. I know that he could have been the editor of *Women's Wear Daily*, if he had given it a try.

Despite his interest in my wardrobe, David did not invest a lot in his. He was not a clothes horse. He did not collect fine art. He did not covet fancy fast cars. Although he was a savvy investor, he was not captivated by the stock market. To David, there was only one good asset that was truly worthy of investment: real estate.

I have often said that before the Law School found a parcel of land on which to build Feil Hall (our spectacular 22-story residence hall), I kissed a lot of frogs of the real estate genus. In my quest to find a suitable lot, I was merely pursuing a search that David had begun years before. Over the course of seven years, I looked at dozens of properties. David wanted to know about every single one, and he wanted to know a lot. “What is the FAR?” “How high can we build?” “Are there setback requirements?” “Can we double-load the corridors?” “What is the price per square foot including construction?” We could, and did, talk endlessly about prospective projects. To him, almost any piece of real property was better than a share of stock, and he could do a project pro forma in his head. David was very good with numbers. He claimed that he could add

figures in his head faster than I could do them on my calculator. He was very often right. He could have been a successful developer.

David had particular points of view and he stuck with them. One of them was that if you had ever worked for him, or with him, he considered the relationship binding forever. This had some downside, but a lot of upside. Even if many, many years had elapsed since the time you and David worked together, he still considered that he was directly responsible for any of your accomplishments. Of course, this also meant that he took great pride in what you had achieved. David also had tremendous loyalty to you. The point isn't that in his eyes you could do no wrong — David would be first to tell you when you had — rather, the point is that he stuck by you, even if you messed up. I can't tell you how many people have told me over the years, as well as recently, that David was their rabbi. David was a rabbi to so many people that he could have had his own congregation.

David was a developer in another sense, as well, because David's loyalty was not just to people. It was to institutions. The Eastern District of New York and Brooklyn Law School were two beneficiaries of his loyalty. The Federal Bar Council was another. All of the institutions that he touched were improved and moved to higher levels.

David was not shy about his many accomplishments and he was entitled to be honored for them. David very much wanted his portrait to hang in Brooklyn Law School. One of our wonderful graduates, who was also a member of the Board of Trustees, contributed money specifically for this project. David dealt with it totally on his own. He selected the artist and viewed the preliminary sketches. At some point, I received the final bill from the artist so I knew the portrait had been completed.

I asked David about it. "Where is it?" "I've got it in my chambers," he replied. So, I went to see it. The portrait was in a black garbage bag in his closet. "I hate it," he said, "it's awful." And he was right. It stayed in the closet.

Years later, I started a tradition of having portraits done of our retiring faculty members. David loved them. Not much for subtlety, it was clear he wanted one painted of him, too. I'm so glad I decided to do it. David saw it completed and we were figuring out the right event at which to unveil it. I'm sorry that it's today.

Now, this portrait he liked. The artist, Linda Brandon, sent me a message that David had sent her, which said, "I think the portrait is great. You did a great job. I much appreciate it. I don't know when they're going to have the unveiling, but I hope you'll be able to attend. Again, thanks a lot. Take care."

Linda did come and she is here this afternoon. Thank you for coming from Phoenix to be with us.

And now here it is.

Contributions in Judge Trager's memory
may be made to Brooklyn Law School for the
David G. Trager Public Policy Symposium Fund.

For more information, please contact
the Office of Development at 718-780-0638
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