

THE PROVOCATEUR

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As a man of words, Howard would have liked the sound of and characterization as a “Provocateur.” But nothing he would say would give you a clue about his pleasure; instead, you would discern it from the sly, knowing grin that would come over his rugged face. You would have caught him in his most stimulating role; he would quietly share this moment of revelation with you! And then, back to the business at hand. I shared a few other similar moments of revelation with him, feeling then as I do now — honored that he respected me enough to admit to these human traits within his professional demeanor.

As I reflect on his professional career, I see someone who devoted substantial energy to stimulating thoughtful reactions in others. He was forever identifying problems that ought to be confronted, inherent weaknesses that needed to be strengthened by his notions, and subjects that awaited exploration. I realize that he worked all of his life as a professional to provoke others into thinking anew about old, comfortable concepts or policies. Nothing should be taken for granted. Proximately causing new thoughts that would illuminate the fallacies in our past was a large part of the essence of Professor Howard L. Oleck.

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I had known Howard Oleck for 35 years. I first became acquainted with him in 1960 when he was the first-year torts professor at Cleveland-Marshall Law School in Cleveland, Ohio. Partnership-corporation law came the next year; then he was advisor for those of us on *Law Review*. Four years later, while I was in practice, he advised me about evaluating graduate programs. When I considered going into teaching, he was very helpful in my learning the procedures and practices of the hiring schools. His continued sage advice guided my course through the tortuous maze of publishing company contracting. He was, as mentor, always ready to help and usually right with his insights. Our families maintained contact over subsequent years at A.A.L.S. meetings and through an intense involvement as officers and directors of Scribes, The American Society of Writers on Legal Subjects (1972–83). When I joined the Stetson University College of Law faculty in 1981, Howard had been a member of its faculty for several years. Our long-term relationship blossomed into a mature friendship on a personal and familial level. It continues today with his wife, Helen, who for the 53 years of their marriage provided balance, softness, and class to his image.

AS EDUCATOR

Once you were exposed to this man's classroom techniques in, say, a course on Torts, you experienced one Oleckian innovation. The adjective also identifies it as original and unique. The innovation was called the "Adversary Method" of law teaching.¹ Now that I have been in teaching for over twenty-five years, I strongly suspect that he created this teaching method out of the real frustration of stimulating analytical thought, as opposed to rote memory, in law student minds. Although Oleck wrote that the usual methods of student case recitation produced dull and dry classroom moments,² I suspect that over the years there was more to it than just this reason. If one is an interactive classroom teacher, as Oleck was, then the weaknesses in students' undergraduate backgrounds, classroom conditioning, preparation levels, practical experiences, and writing skills, will go toward explaining why he remained passionately committed to applying and advancing his creation.

To this day, I still remember the experience of representing the plaintiff in a tort action before a room full of my classmates. The case, my arguments, and the law remained in my memory for a period longer than most other memories of the same first-year period. Equally significant from the professor's goals was the fact that this first-year student was stimulated by this experience to exert greater efforts in his course. My case, as well as the cases of my colleagues, came to life; and when they did, they brought a keener understanding of syllogistic reasoning — applying facts to law for reaching a sound conclusion to each issue.³ A lesson well ingrained? Without question! Did other professorial methods approach such a success?

1. He developed and instituted this technique at New York Law School in 1948 and wrote about his experiences over 28 years of his career. See Howard L. Oleck, *Adversary Method of Law Teaching, Summarized*, 27 J. LEGAL EDUC. 86 (1975) [hereinafter *Adversary Method Summarized*]; Howard L. Oleck, *Thirteen Years of the Adversary Method*, 13 J. LEGAL EDUC. 83 (1960) [hereinafter *Thirteen Years*]; Howard L. Oleck, *The "Adversary Method" of Law Teaching*, 5 J. LEGAL EDUC. 104 (1952) [hereinafter *Adversary Method*].

2. "[T]his method stemmed from dissatisfaction with the waste of time and the unrealism of much ordinary student presentation of cases in class." *Adversary Method*, *supra* note 1, at 104. The Adversary Method "began as an experiment, growing out of dissatisfaction with the usual dry student presentations of cases." *Thirteen Years*, *supra* note 1, at 87.

3. For Professor Oleck's exposition on this aspect of his method, see *Adversary Method Summarized*, *supra* note 1, at 89-91.

Not in my experience while earning three degrees!

Obviously, Oleck was not afraid to experiment when confronting identified inadequacies in a teaching system; even when few, if any, acknowledged⁴ or adopted⁵ his ideas and method. Instead of letting the idea die, he persisted into the 1980s to speak to me and others about applying and reporting on our experiences. As I have employed it from time to time, he was right. The method achieves the benefits he reported. It involves. It generates enthusiasm. It stimulates interest, and illuminates rules and forces their application. It takes time and preparation, but it is effective!

Nonprofit Organizations as a recognized course suitable for law students was also an Oleckian creation. It was stimulated by his writings on the subject,⁶ which enabled him to be a Congressional Consultant to the Patman Committee on Foundations.⁷ As a Corporations-Partnership Law teacher⁸ (a second-year course when Oleck taught it), he experienced the frustration of trying to judicially integrate an appropriate amount of materials, while the nonprofit subject expanded rapidly. This latter experience caused him in 1964, to

4. He recorded the deafening silence that greeted his 1952 article, cited in *supra* note 1, in the opening paragraphs of his 1960 article. See *Thirteen Years*, *supra* note 1, at 83.

5. At New York Law School, as an Associate Professor, he reported that no other faculty member had chosen to experiment with the new method in spite of the fact that the Dean, Alison Reppy, supported its use. See *Adversary Method*, *supra* note 1, at 106. In the 1960 article, he reported on two professors who were using alternative methods, but neither were replications of his specific method. See *Thirteen Years*, *supra* note 1, at 87.

6. Articles authored by Howard L. Oleck: *Mixtures of Profit and Nonprofit Corporation Purposes and Operations*, 16 N. KY. L. REV. 225 (1988); *Nature of Nonprofit Organizations in 1979*, 10 U. TOL. L. REV. 962 (1978); *Trends in Nonprofit Corporation Law in 1976*, 10 AKRON L. REV. 71 (1976); *Nature of American Non-Profit Organizations*, 17 N.Y.L. FORUM 1066 (1971); *Proprietary Mentality and the New Non-Profit Corporation Laws*, 20 CLEV. ST. L. REV. 145 (1971); *Non-Profit Types, Uses, and Abuses: 1970*, 19 CLEV. ST. L. REV. 207 (1970); *Proxy Voting Power in Non-Profit Organizations*, 14 CLEV.-MARSHALL L. REV. 273 (1965); *Non-Profit Associations as Legal Entities*, 13 CLEV.-MARSHALL L. REV. 350 (1964); *Foundations Used as Business Devices*, 9 CLEV.-MARSHALL L. REV. 339 (1960). Treatise authored by Howard L. Oleck: *NON-PROFIT CORPORATIONS AND ASSOCIATIONS: ORGANIZATION, MANAGEMENT, AND DISSOLUTION* (1956).

7. See generally CHAIRMAN OF HOUSE SELECT COMMITTEE ON SMALL BUSINESS, 87TH CONG., *TAX EXEMPT FOUNDATIONS AND CHARITABLE TRUSTS: THEIR IMPACT ON OUR ECONOMY* (Comm. Print 1962). I was one of many students hired to compile statistics from foundation reports. We worked in the law library for well beyond a semester.

8. In addition, Oleck authored the multi-volume treatise *MODERN CORPORATION LAW* (1960).

initiate a separate course as a two-credit elective.⁹ Unusual as it is for the ordinary law professor to have the rare opportunity of creating materials, initiating a course, and seeing the idea adopted elsewhere,¹⁰ Howard Oleck considered his achievement as something to be expected but not exalted; something to be promoted to others who could continue an activity he deemed important.

AS A WRITER

As a man of words, we see from his bibliography how prodigious a writer Oleck was.¹¹ Whether you knew him on a personal level only, or read his numerous publications,¹² Oleck spoke as he wrote: knowledgeably,¹³ but with word pictures;¹⁴ formalistically,¹⁵ yet above all, with clarity.¹⁶ He wrote to educate the reader.¹⁷ He wanted to demystify the law so that it would become accessible to the general public, so he wrote a regular newspaper column.¹⁸ This phi-

9. See Howard L. Oleck, *Non-Profit Organizations as a Law School Course*, 17 J. LEGAL EDUC. 457, 459 (1964).

10. The course is currently offered at Wake Forest. It has been offered at Villanova, Stetson, Cleveland State, and Syracuse, as well.

11. A selected bibliography is printed at Elizabeth A. Moody, *The Scholar*, 27 STETSON L. REV. 338 app. (1997).

12. For this statement, I read many of his published articles. Other writers in this memorial will recount his book publications that are listed in the bibliography. See *id.*

13. See, e.g., Howard L. Oleck, *Remedies for Abuses of Corporate Status*, 9 WAKE FOREST L. REV. 463 (1973); Howard L. Oleck, *Specific Performance of Builders' Contracts*, 21 FORDHAM L. REV. 156 (1952).

14. "Nobody attacks the big Wall Street 'law factories' because they monopolize most of the big reorganizations . . ." Howard L. Oleck, *Reforms Needed in Negligence Practice*, 6 CLEV.-MARSHALL L. REV. 388, 396 (1957). In this same work, he referred to "meat axe" methods employed to reduce judicial calendars in the New York area. See *id.* at 399.

15. See Howard L. Oleck, *Historical Nature of Equity Jurisprudence*, 20 FORDHAM L. REV. 23 (1951); Howard L. Oleck, *Maxims of Equity Reappraised*, 6 RUTGERS L. REV. 528 (1951) [hereinafter *Maxims of Equity*].

16. He never lost sight of the goal of reader understanding. For example, in a review of his book on tort litigation, OLECK'S TORT LAW PRACTICE MANUAL (1982), he was praised for his clarity, annotations, and practical suitability for practitioners; yet, criticized for taking legal complexities and reducing them to an overly simplistic level. See E.A. Principi, Book Review, LEGAL ASPECTS MED. PRAC., Sept. 1983, at 8.

17. See, e.g., Howard L. Oleck, *Research and Writing for the Professional Market: The Financial Aspects*, 19 J. LEGAL EDUC. 325 (1966-67); Howard L. Oleck, *Nuisance in a Nutshell*, 5 CLEV.-MARSHALL L. REV. 148 (1956).

18. Oleck's columns appeared in the *Cleveland Plain Dealer* and in legal newspapers in Cleveland, Ohio (*Daily Legal News*), Fort Lauderdale, Florida (*Broward Review*), St. Petersburg-Clearwater, Florida (*Pinellas Review*), and other cities.

losophy, so obvious in most of his straightforward writings, was clearly stated in a brief book review of a handbook written by E.C. Lashbrooke, Jr. and Michael I. Swygert.¹⁹ In this review, Oleck wrote:

It provides complete, though brief, coverage of all the important aspects of business law . . . and such fine choice of language that it is easy to read. . . . It really succeeds in making complex matters clear enough for even the business person who reads and runs. Blessed be the writers who try to help their readers rather than impress them.²⁰

Once, as an upperclass law student on the *Cleveland-Marshall Law Review*, I asked him how one learned to write (impliedly like he did as a professional). “You learn to write by writing, but preferably for money.”²¹ He told me then, and later reinforced when our paths came together again at Stetson University College of Law, that one should write every day in a place where the interruptions would be the fewest. He did this with fountain pen and pad, nearly every morning, in the office and, in later years, at home. He believed in strenuous editing of his own works and the works of others, which task was never easy in the days before word processors. It was his editing skills that gradually elevated the recognition of the *Cleveland-Marshall Law Review* during his tenure as Advisor and Associate Dean. And it was through his personal efforts and contacts that nationally recognized experts and authors submitted articles for publication in that journal. Thus was he instrumental — for his own interests as well as that of his institution's professional journal — in advancing the state of education and written dialogue.

19. Howard L. Oleck, Book Review, 43 BUS. LAW. 787 (1988) (reviewing E.C. LASHBROOKE, JR. & MICHAEL I. SWYGERT, LEGAL HANDBOOK OF BUSINESS TRANSACTIONS: A GUIDE FOR MANAGERS AND ENTREPRENEURS (1987)).

20. *Id.*

21. The monetary aspect of this advice was necessitated by the generally low salaries of full-time law professors, in comparison to judges, as he explained years later. Instead of practicing part-time as many professors did, he followed the research and writing path of the professors at the first ranked schools. It was his writing that opened doors to visitations and full-time positions at other institutions in his later years.

His philosophy about writing for financial gain was clearly delineated in the comprehensively practical article, *Research and Writing for the Professional Market: The Financial Aspects*, *supra* note 17.

AS A THOUGHT PROVOCATEUR

Ideas, research proposals, and sundry projects just flowed, like an artesian stream, from the mind of Howard Oleck. Throughout his professional life he transferred his creative thoughts and impassioned concerns to anyone who would listen, whether they wanted to know them or not. I knew that he truly believed that most intelligent people were somewhat lazy in generating creative thought; so, since he seemed endowed with an ability to generate so many thoughts, he would continually strive to implant others with the seeds of his ideas. And, since he had or developed a directly adversarial nature, honed, no doubt, from his WWII experiences as a tank commander, stimulating heated reactions or angry outbursts were never a deterrent to his efforts. Taking the most offensive side of an argument was a regular tactic when in the classroom or leading a discussion group of mature adults. He was such a passionate believer in the rightness of his own ideas and conclusions, the fact that others were offended by his directness, a directness that could have been mistaken for tactlessness, often escaped his conscious recognition. It was always amazing, even in his later years, to experience the passion and enthusiasm with which he advanced his thought-provoking ideas.

Such interchanges were effective nonetheless. You would never leave the meeting as you entered it. You would never again look at the same topic or subject in the same way, whether it had been a rational discussion or heated argument. He forced you to rethink your position, your assumptions, and your biases. Whether it was a review of your past argument or a later revisit of the specific subject, he provoked in you, thoughts. And, often, I was caused to think again and to come to new conclusions or ideas. I saw this same effect in colleagues and mutual friends.

After the many years of our friendship, I am still astounded by the continuity of performance in one human being — to provoke so consistently, to provoke so persistently, with such effective results.

He provoked because he perceived problems. In an early article about equity maxims,²² he concluded with this:

How many of the woes of our generation are traceable to our ne-

22. *Maxims of Equity*, *supra* note 15.

glect of basic principles in the law, and in other fields, is a question which cannot safely be left to the research of historians of future generations. If we wish our way of life to survive, we must remedy our defects before they become the cause of our destruction.²³

He provoked, but, often, with a remedy in mind. For the problem of engaging objective expert witnesses for medical malpractice cases, he proposed enlisting the cooperation of “emeritus” physicians, who were capable of engaging in useful work but not that which required the intensity of daily practice.²⁴ For the problem of wasted professional legal resources, such as the hundreds of underutilized emeriti professors, he recommended organizational recognition, participation and a set of standards for productive involvement.²⁵

Court congestion, judicial dockets and case disposition problems were analyzed from a national perspective in an early remedial article entitled, *What To Do About Delay in Court*.²⁶ No problem seemed too large or small for this man's attention. No group was too exalted for his consideration. While still only an assistant professor at his first institution, New York Law School, his work on bank account trusts was subtitled, *Should They Be Presumed To Be Fraudulent?*²⁷ I wish I had thought to ask him about the probable repercussions from this piece.

He sought to provoke reform. Trial lawyers, particularly those in the negligence field, were the subject of critical attack in the mid-1950s.²⁸ To a long list of critical claims, Oleck replied in detail as

23. *Id.* at 549. Oleck's reference to “neglect of basic principles” refers to moral principles of equity as extracted, refined, and stated as guiding standards for contemporary times.

24. See Howard L. Oleck, *A Cure for Doctor-Lawyer Frictions*, 7 CLEV.-MARSHALL L. REV. 473, 478–81 (1958). Oleck identified the “conspiracy of silence” among professionals in this work. His proposal would have circumvented the reluctance of practicing physicians to objectively scrutinize the practices of their working colleagues.

25. Letter from Howard L. Oleck, *Developments — Emeriti Professors: A Wasted Resource*, 33 J. LEGAL EDUC. 369, 376 (1983).

26. Howard L. Oleck, *What To Do About Delay in Court*, 4 LAW OFF. ECON. & MGMT. 145 (1963).

27. Howard L. Oleck, *Bank Account Trusts*, 91 TR. & EST. 39 (1952).

28. I remember a long period from the late-50s into the mid-60s, beyond the articles Oleck cited in the next footnoted article, when abuse was heaped upon this bar group.

well as suggesting reforms²⁹ to practices in this professional group to which he identified in philosophy and spirit. He relished characterizing lawyers to his students as “gun-slinging paladins.” They were the one causative force in Western society that corrected wrongs and advanced the good for the benefit of the less fortunate. He extolled the reform features of the American system of litigation.

I marvel at the driving courage these efforts required. Attempting to provoke remedial change in largely immovable groups like the negligence bar, court administrators and judges, and wealthy depositors of banks, first assumes that problems will be readily admitted. Knowing they generally won't be, Oleck moved ahead in spite of that recognition; in spite of expected criticism and ridicule, some of which I have been aware. But as noted earlier, he was passionate in the rightness of his thoughts and analyses so he was undaunted in speaking and writing against the “common wisdom.” For example, in advance of a special study by the Association of American Law Schools to measure the merits of part-time legal education (i.e., the evening law schools), he published a carefully constructed, practical defense of such programs.³⁰ Knowing of the general disdain for them, he was not deterred from writing against the current trend.

Satire was one of his tools to provoke the establishment, dislodge old ways, and stimulate a thought:

Turning to the more animated aspects of law professors and decanal officeholders, consider the straight-faced comedy of many faculty meetings. At these periodic group therapy sessions the dean almost invariably emphasizes that, of course, he is only *Primus Intra Pares* (First Among Equals). But let any one of the faculty take him literally, and try to act like a *Pares*, and watch the dean's lips grow thin³¹

And every so often he achieved the status of a prescient sage, by perceiving and then warning well before others:

Take warning from what already has happened in so many

29. See, e.g., *Reforms Needed in Negligence Practice*, *supra* note 14.

30. See Howard L. Oleck, *Facts and Fictions About Evening Law Schools*, 12 CLEV.-MARSHALL L. REV. 1 (1963).

31. Howard L. Oleck, *The Pompous Professions*, 18 CLEV.-MARSHALL L. REV. 276, 277 (1969).

schools, where teachers now are generally subservient to administrators; in the business world, where inventors are subservient to administrators, and in many other areas of our society where the tail now busily wags the dog.

When an "organization man" not only denies to the medical "professional man" control of his own hospital, but also makes him the *scapegoat* for "the organization," professional men must defend their rights if they are to survive. . . . The hospital organization exists for the use of the physician, not the physician for the use of the organization. And it is the duty of lawyers to protect the fundamental *values* of our society.³²

It should be obvious that all the foregoing puts the lie to his statement in *The Pompous Professions*³³ that in eulogy only the miser becomes a generous man.³⁴ Howard was in life as he is now in reflection: a genuinely extraordinary human being. He made an impact on this and other lives. Blessed were we by his provocations.

32. Howard L. Oleck, *Doctor, Lawyer, and Hospital Administrator? A New Triangle*, 8 CLEV.-MARSHALL L. REV. 416, 423 (1959).

33. *See supra* note 31.

34. *See id.* at 277.