

A TRIBUTE

*Michael P. Richman**

It was ten years ago that I first wandered into Judge Duberstein's courtroom in Brooklyn. I had just been engaged for the very first time as counsel to an official creditors' committee and was making my first appearance in the case. Of course I was nervous. Also present were the debtors' lawyers and lawyers for other important constituencies and professional advisors. I expected the experience would be similar to what I was accustomed to in other bankruptcy cases—a somewhat intimidating display of power from the bench.

Was I ever wrong! What I soon discovered, as have so many others, was the pleasure of receiving and sharing in an overwhelming display of warmth from the bench. For the first fifteen minutes of the hearing, before we ever turned to the actual business at hand, Judge Duberstein took each of us in turn and went far beyond basic introductions of name and firm. He delved into our educational, family, and even religious and personal backgrounds. With each of us, he tried to connect with us on some level as we revealed ourselves to him. Yes, Judge Duberstein was not “politically correct.” Who could imagine a judge commenting on a lawyer's religion or family background? Who could imagine a judge openly flirting with the women who appeared before him? Yet he did all these things, and truth be told, we all loved it and we loved him. His manner was so charming, so ingratiating, so unthreatening, so real, that we enjoyed sharing our personal lives with him.

Judge Duberstein was everyone's favorite grandfather, and his courtroom was like a living room that was entered for conversation. In the manner in which he oversaw the proceedings, he made it powerfully clear that the practice of law and the business of the courtroom were at all times secondary to the pure joy of human beings collaborating with one another and sharing their stories and experiences. Indeed, no hearing could begin before Judge Duberstein regaled us with one or more stories of his youth, his war history, or his family. And he was an outstanding storyteller and humorist. We heard the

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same stories and jokes over and over again at every hearing, yet they were as funny with each re-telling, and we laughed as lustily as on the very first recital. It was in his manner, his warmth, his delivery.

So in due course we followed the adventures of young Private Duberstein in the Second World War. He had graduated from St. John's University School of Law (earning his degree in night school) as a member of the Law Review in 1941 and was admitted to the bar in 1942. But 1943 found him on the battlefields of Italy as a member of the Ninety-first Infantry Division. Compete with a comic's superb replication of accents, he told us about his war adventures, including being wounded in action. We learned that he received the Purple Heart, the Bronze Star Medal, three Battle Stars, and the Combat Infantry Badge. When the war ended, he remained in service as the Italian interpreter for court martial cases before returning to the United States to practice bankruptcy law in 1946.

Judge Duberstein then had a long and rich experience as a bankruptcy lawyer, and he was not appointed to the bench until 1981 when he was already sixty-five years old. This experience not only informed his story-telling, but gave him deep insights as a judge. Indeed, Judge Duberstein is so often remembered as a judicial humorist that much less attention is focused on the quality of his judging than it should be. He presided over more than 20,000 cases and wrote more than 170 published opinions. He was named Chief Judge for the Eastern District of New York in 1984. There are likely many thousands of unpublished opinions and rulings. As my own experience in his Court showed, Judge Duberstein worked diligently to get to the right results, sparing no effort to cut through lawyer rhetoric and discover the true facts, stories, and motivations. Of the well-over one hundred hearings I attended in his courtroom, I can truly say I saw him lose his temper and express something close to anger only once, when he believed a lawyer was not being forthright with him. In all other circumstances, no matter how ill-informed the lawyer, no matter how poorly presented the argument, he was patient, courteous, and even helpful. He took particular interest in younger lawyers making their first appearances and served in many cases as an unofficial mentor to them.

The affection and respect I felt from my appearances before him were widely shared throughout the bankruptcy community in New York, so that he was the natural (and perhaps only) choice of honoree when the American Bankruptcy Institute and St. John's University Law School came together in 1993 to create the nation's only bankruptcy moot court competition, named in

his honor as the Duberstein Competition. Privately, I've always suspected part of the reason for naming the competition for Judge Duberstein was to assure he would attend the awards dinner each year and entertain the participants and guests with his great humor and storytelling, and concomitantly to serve as a draw for the wider audience of the New York bankruptcy community. Whether by design or not, it certainly succeeded. The competition's awards dinner has grown every year since 1993, and last year drew an audience of more than 700 people. It is a fitting tribute that the competition will continue to bear his name and be an occasion for honoring his memory on an annual basis.

In 1995, after serving fourteen years, then a spry and sprightly eighty year-old, Judge Duberstein retired from the bench and was immediately recalled to continue serving as Chief Judge. He continued to be so reappointed and to continue to serve every single year thereafter until his death. Right up to his last days with us, he remained full of humor, intelligence, and joy. Though we did not know then that his months remaining with us were numbered in the single digits, he made the trip to Atlanta in the spring of 2005 where I had the great honor of presenting him with a Lifetime Achievement Award on behalf of the *Emory Bankruptcy Developments Journal*. He called me shortly thereafter to let me know how moved he was with the award and the companion trophy presented on behalf of the American Bankruptcy Institute, and to let me know how prominently it was displayed in his chambers. The point is that nothing, not age, not infirmity, nor illness, ever served as an excuse for Judge Duberstein to wield his personal touch and courtesies to others. He didn't have to call and thank me. But he did. What an enormous and powerful example of the way we should all live.

There will never be another like him. How fortunate we all are to have had him with us for so many years.