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Hans

Harry Kalven, Jr.†

I begin with a story that points to a moral about the anomaly of Hans Zeisel reaching emeritus status. For many summers during our life of collaboration on the jury studies, we would play tennis almost every day. We were reasonably well matched and familiar with each other's games so that there was special pleasure in playing each other. Normally Hans would win, but there were always a few victories for me for the season and always the chance that any given day might be one of those victory days. After some years of steady losing, I hit upon a secret strategy. I was nine years younger than Hans. I would simply wait until age inevitably caught up with him and I emerged as the steady winner. It almost worked. The years did pass and Hans did grow older. Only the day came when I discovered I had become too old to play tennis that vigorously any longer. Hans hadn't discovered a thing!

For a decade and a half our collaboration in the Law School's venture into an interdisciplinary empirical study of law and legal institutions was total. Phil Neal insists that his young son, Andy, expressed great astonishment one day at the discovery that Kalven and Zeisel were *two* people. He had heard so much about "Kalvenzeisel" said rapidly.

If the Neal children were confused, I've wondered a little about my own. They must have thought he was some kind of third parent. During the years when his family had stayed East and he was virtually commuting weekly from New York, Hans was a welcome and regular visitor in our home. He endlessly debated musical excitements with Betty and was

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the adult known most intimately by each of our four children as they grew up. For each he is an important part of the fabric of their childhood memories. He swam and ran with Jamie, got Peter when eight to do a splendid fifty-word essay on the orange, which Hans sent on to McCann-Erickson, and rehearsed his efforts at mime, taught Michael when three to do somersaults properly, and more recently taught Katie to stand on her head. And in times of serious trouble his kindness and concern were unlimited. When Michael lay unconscious and seriously injured, alone in a hospital in Boise, Idaho, after an auto accident while he was en route to a Sierra Club trip, it was Hans who struggled through the perplexities of an airplane strike to secure me emergency transportation and who provided emergency cash from his own pocket. He has been a great friend not only of mine but of Betty and the children.

Collaboration with him was not simply an interdisciplinary endeavor, it was an education in comparative cultures. He was the first European we had known intimately, and he was loyal to what he saw as the advantages of European, and especially Viennese, life. There was hardly a week that was not enlivened and, in the end, enriched by an argument over whether this or that was not done better in Vienna than the United States, from subsidizing theater, to studying Goethe, to making candy and ices, to playing chess as a national pastime, to having the losing party pay lawyers' fees, to developing a taste for soccer and the slalom.

His admiration for the quality of European life led to an amusing and persistent ambition that was destined somehow always to be thwarted. He was ever aspiring to bring to America some unnoticed invention he had discovered in Europe, and thereby finally make his true fortune. I had once intended to keep a list of the items that American entrepreneurship had overlooked. At the moment I recall most vividly a Rube Goldberg-like contraption which literally took over our kitchen for a few days, a machine for cooking fresh fruit and vegetables and drawing off the juices so that American homes could enjoy the pleasure of a steady supply of plum, raspberry, and broccoli juice. Betty was to cook countless items for Hans to take in vain to the marketplace.

Sharing twin cultures added a fine edge to a strong native sense of humor. He has told me many of the best jokes I have ever heard. I have selected five from a rich memory of Viennese flavored anecdotes. I am not going to retell them here; I am simply going to give the last lines so that when you see Hans you can hear the jokes from him—told as they should be told:

“Gentlemen of the Jury, *one* chicken.”

“Blintzes *he* liked.”

“What a relief! I thought you said 100 million years.”

"Some risks you have to take."

"Please, Morris, don't make trouble."¹

He had another persistent ambition, this time stemming from his enthusiasm for English literature. When I first met him, he was carrying with him, as a sort of household god, an unexpected essay on *Romeo and Juliet*. In it, with considerable erudition and insight, he put forth an explanation for some of the plot's puzzles: Shakespeare's genius had anticipated psychoanalytic insights and endowed Romeo with a "death wish." I was never fully persuaded, but he argued his point with skill and careful attention to the text. In any event, try as he would for years, he could not get the essay published—in part because of its unorthodox message and because of his being so far outside the literary establishment. It became sort of an ultimate quest for him, and every few months the essay was dusted off, retyped, and sent on to some new possibility he had just heard of. It comes to mind now because I had begun to have fantasies of a final solution—of it being slipped in as one of the chapters in *The American Jury*, perhaps after Chapter 4, "Methodology: The Research Design." In my fantasy either I was doing it to surprise him or he was doing it to surprise me.²

He manages, I think, a sensible and balanced view of the Old World and the New. He greatly admires the energy, power, size, and promise of America, and, above all, he admires its political freedom. He came here in the late thirties because of Hitler. He struggled hard to make sense for himself out of the heartbreak of the German response to Hitler. Years later, during the Eichmann trial, he wrote a splendid essay for *The Saturday Review of Literature* compassionately reflecting on what it was proper to do with Eichmann then.

He joined us at the Law School in the early fifties when we had received a large Ford grant to launch a series of law and behavioral science projects, and he immediately added to the excitement and flavor of the school in those heady days. He had come with a notably versatile background which included doctoral degrees in law and political science; he had practiced some law in Vienna; he had collaborated in 1930 with Paul Lazarsfeld and Marie Jahoda in *Marienthal*, a celebrated study of the impact of the depression and unemployment on a small Austrian town. In 1947 he had published a guide for the use and exposition of statistical materials, *Say It With Figures*, which has gone through five editions, has been, as he proudly boasts, translated into Japanese, and

¹ Compare Kalven, "Please, Morris, Don't Make Trouble": Two Lessons in Courtroom Confrontation, 27 J. SOCIAL ISSUES 219 (1971).

² There is a happy ending. The essay was finally published by the Japanese Shakespeare Society.

was once compared by reviewer Martin Mayer to Fowler's much-admired *Modern English Usage*. The book stresses one of Hans's favorite and most valuable theses, namely, that the use of statistical tables, like the use of verbal language, is largely a matter of exposition and style. I know no one who has displayed more lucidity and taste in the use of numbers than Hans Zeisel.

When the behavioral science studies finally settled down in 1955 to two major ventures, the arbitration study under Soia Mentschikoff and the jury study under Hans and myself, Hans and I embarked on a partnership in scholarship and research that was and remains, I think, unique. It came to fruition in two books: *Delay in the Court*, a study of court congestion and the jury's role in causing it, published in 1959, and our major effort, *The American Jury*, published in 1966. We emerged with a book of 500 pages and 150 tables, and we achieved our aspiration of writing a coherent essay on the performance of the American jury system over "a full season" and of making the logic of our methodology explicit, accessible, and interesting. The joint intellectual process through which over several years a pile of thousands of dry judge-jury questionnaires became alchemized into a book represents the most remarkable and challenging experience I have yet had.

Our collaboration was, as I said, total. We reached, despite the differences in our backgrounds and training, a unified perspective on our common subject matter and learned that interdisciplinary effort did not require that each become expert in the other's discipline, but rather that they pursue a joint interest in the subject matter and argue out differences.

We overcame great practical and intellectual difficulties in working through so uncharted a course of scholarship, we survived the personal strains and fatigues associated with project efforts, we argued, debated, revised, polished, grew despondent, and got excited again day after day over a period of years.

We made a fine team. And we had a splendid time.

The emeritus status is apparently a pure legalism. Hans will remain actively and charmingly in our midst, guiding certain research efforts for the Center for Studies in Criminal Justice, the American Bar Foundation and the Vera Institute of Justice. The moral of the tennis story is borne out once again.