

# A JUDGE LOOKS AT HIS PROFESSOR

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When I reflect on my days as a law student at Duke in the 1950s, an image that immediately comes to mind is that of Jack Latty. Nattily dressed in a gray tweed sport coat, the ever-present pipe perched in his right hand, he engaged the classroom with boundless energy and fertile thought as no one else could. He would approach each problem from every conceivable angle, and could paint a factual scenario with mastery, changing a fact here and there until he had covered the globe. "Query," "what if," "suppose," "how come"—Jack Latty swiftly and deftly disabused students of any lingering notion that an answer is somehow more important than the proper question. Forever probing, forever seeking to expose the sloppy thinking that lawyers and judges tend to enshroud in conclusory labels and doctrinal generalities, he kept us in awe of his ability to "explode" a legal problem. For the uninitiated, the following excerpt gives a flavor of Latty's talent for dissecting a problem. The excerpt is from an article he wrote concerning a contracts question that had appeared on a bar examination:

As you look at that question you see some nice legal issues there: Do the facts (and if so what facts and why) impose upon the seller an implied warranty of quality, either of fitness for the general purpose of such an article ("merchantability") or, of "fitness" for a revealed intended use? Do the implied warranties arise here even though, inferentially, the seller is only a dealer and not the manufacturer and even though, again inferentially, the sale was of a specific identified chattel available for inspection? Or, for any other reason, does this call for application of the caveat emptor rule? Do the facts establish, at least prima facie, defectiveness at the time of sale, as against defects that developed later from misuse and abuse by the plaintiff? If there be doubts as to whether circumstances of the sale gave rise to an implied warranty of quality, were those clarified by the seller's attempt to repair, as a recognition by him of his obligation as to quality? If a warranty here was breached, is rescission a proper remedy or is the complaining buyer left to sue for damages? Does the seriousness of the defect bear on the rescission remedy?<sup>1</sup>

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1. Latty, *The Law School Dean Looks at the Bar Examination and the Examiner*, 31 B. EXAMINER 99, 105-06 (1962).

Thousands of lawyers around the country will remember the infamous pipe. The pipe was a true barometer of the man's thought processes. As Latty thought up new facets of a problem, the smoke would puff with increased fervor; when the exchange reached a heightened pitch and he closed in with this attack, the smoke literally belched from the pipe. If the mind began to outpace the mouth, there would be a pause as he collected his thoughts, drawing reflectively on his pipe. We quickly learned, however, that these brief respites only signaled that a new flock of "queries" was about to land upon our shoulders.

Jack Latty's door was always open to students. Like those of the present-day, students from my generation spent a good deal of energy worrying about such things as "career paths," "employment packages," and "partnership potential." Latty would brush these concerns aside, telling students that no matter where they went after graduation, they would likely become involved in several different professional relationships over the course of their careers. His advice was simple but sound: get the most you can from each professional relationship and concentrate on being the best lawyer you can be. A good reputation is the most marketable thing a lawyer can have, he would remind us; once you have built a reputation, you can go wherever you want. I cannot think of any better advice to give my law clerks today.

My contact with Jack Latty did not end when I graduated from Duke in 1957. I had always regarded him as a father figure, and when my own father died in 1960 I became even closer to him in that regard. Like any father, he kept close tabs on me as I progressed through my professional career. He was on the phone with me during the process leading to my confirmation as a federal district court judge in 1970 and again when I was elevated to the court of appeals in 1975. Never did he pass through town without stopping to look up "his boys."

Jack Latty had a tremendous impact on my life and my thinking as a jurist. With me to this day is the memory of his ardent belief that every angle to a legal question, no matter how obtuse that angle may be, must be explored objectively and without the taint of a hidden agenda. I am sure that I echo the sentiment of Duke lawyers across the country when I say that I am deeply indebted to Jack Latty.