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John W. Reed and the High Style

*Theodore J. St. Antoine**

John Reed is the Fred Astaire of the law school world. That doesn't mean John would win prizes for his waltzing and tangoing; the kinship runs much deeper. There is the same purity of line in gesture and speech, the same trimness of content and grace of expression, and the same ineffable talent for brightening up a scene just by entering it.

John certainly brightened up the law school days for this former student, a generation or so ago. We jaded upperclass people actually looked forward to John's Evidence classes, and he seldom if ever let us down. The sessions could have been choreographed. John was constantly in motion, playfully juggling one idea after another before our bedazzled gazes. The timing was impeccable. Somehow, magically, he managed not to bore the quick-witted and not to leave the slower learners behind. Did our attention begin to flag? Out would come the sly quip or the droll story, and once more we would be back under the conjurer's spell. And it was all done so effortlessly, so spontaneously that it took years before we realized how much forethought and rehearsal time must have gone into the performance.

Yet, in John's hands, the showmanship was only a means to an end. After participating over the years in many hearings of various kinds, I became convinced that my schoolmates and I were among a privileged few lawyers in the whole country. Painlessly, even entertainingly, John had let us in on some of the profession's most arcane and inaccessible secrets: the true nature of hearsay; the distinction between competency, materiality, and relevance; the best evidence rule; and divers similar conundrums.

Fred Astaire was not Laurence Olivier, and John Reed would not claim to be a Frederic Maitland or a Roscoe Pound. But John looms so large as classroom teacher, both of law students and of practicing lawyers, that it would be all too easy to overlook his considerable capacity for substantial scholarship. Early in his career, in addition to coediting a leading casebook on procedure,¹ John produced a massive 100-page, two-part article on compulsory joinder.² What could have

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1. W. BLUME & J. REED, *PLEADING AND JOINDER* (1952).

2. Reed, *Compulsory Joinder of Parties in Civil Actions*, 55 MICH. L. REV. 327, 483 (1957).

been the dreariest of tomes — at least as viewed by those of us fortunate enough to work in such an intrinsically exciting field as labor and employment law — is lightened throughout by John's sprightly style and his sense of irony.

John neatly sets the stage for his compulsory joinder piece in the very first sentence: "The plaintiff in a civil cause ordinarily is permitted to select the persons with whom he will litigate."³ Similarly crisp is his statement of the issue: "Why should a plaintiff ever be compelled to litigate with or against parties not of his own choosing?"⁴ After working his way through the conventional classification of required parties as "necessary" or "indispensable" and the usual differentiation among obligors as "joint," "several," or "joint and several," John dryly observes: "Whether the distinctions are as clear as the terms are simple is open to doubt."⁵ John proceeds to his own prescription for compulsory joinder in several typical settings, with the emphasis on a factual analysis of the interests of the parties rather than the labels attached to them. He sums up his position in a passage characteristically entitled "In Short," rather than the customary "Conclusion," as follows:

There is no person so intimately related to matter in litigation between others that there cannot be circumstances which will justify proceeding in his absence. The descriptive term assigned to him is irrelevant to the process of decision.⁶

Reading such a closely reasoned, finely wrought article makes one wonder how much important scholarship was lost when John increasingly turned his energies toward deaning, continuing legal education, assorted bar-related projects, and community and other public service activities. But there are consolations. A goodly number of law teachers can produce the sort of work John left unwritten; only a handful have the versatility to accomplish what he has done.

John's occasional addresses are models of their kind. I take particular delight in noting how frequently their titles are derived from John's other great love, vocal music, both sacred and profane — sometimes a rousing old Protestant hymn, sometimes a gem from the Golden Age of American popular song: "O for a Thousand Tongues,"⁷ "What Is This Thing Called Hearsay?"⁸ "Don't Speak of

3. *Id.* at 327.

4. *Id.* at 330.

5. *Id.* at 357.

6. *Id.* at 538.

7. Reed, *O for a Thousand Tongues*, 33 *INS. COUNS. J.* 562 (1966).

8. Reed, *What Is This Thing Called Hearsay*, 36 *MICH. ST. B.J.* 17 (Mar. 1957).

Love.”⁹ Almost invariably John has a serious message to impart, but it is always sugar-coated, or at least well-seasoned, with the deft touches of humor that keep after-dinner audiences awake.

Listen to John expressing his reservations about specialization in the legal profession, and the attendant exclusion of the uncertified from certain areas of practice. He underscores his point with two memorable tales. One is about the gorilla who wins a \$100 golfing bet for his master by slamming a perfect 450-yard drive straight down the fairway. Whereupon, to avoid further embarrassment, the opponent concedes, and he and the gorilla’s owner head for the clubhouse bar. Over drinks the loser finally asks, “By the way, how does he putt?” To which the owner replies, “Just like he drives, 450 yards!”¹⁰ The other story recounts a doctor’s revenge on an old nemesis, a restaurant waiter who is now pain-wracked in the hospital emergency room and frantically beseeching aid. Says the doctor, “I am sorry. You are not on my table.”¹¹

That presentation was made before a group of law students at Oklahoma, where John first began teaching. John started lightheartedly — “we can only be young once, but we can stay immature forever”¹² — but he closed on a serious note:

I would like to think there is still a place for the generalist, for the person with broad and warm sympathies and sensitivity.¹³

Yet he cautioned:

[W]e must develop some better way than we now have to see to it that members of the profession keep their credentials up-to-date and try to improve their skills throughout their professional lives. Finally, I hope we will not be slow or reluctant to move vigorously as responsible members of that profession to help bring about these changes when they appear to be merited.¹⁴

Those last passages reflect two of John’s most winning qualities — his intellectual honesty and his openness to new ideas. He even has the rare capacity to confess error, or at least incipient error, in print. A pair of papers, delivered a mere four years apart, demonstrate this. In 1966, just before such notions as “body language” and “nonverbal communication” became fashionable, John warned trial lawyers that

9. Reed, *Don’t Speak of Love*, 1970 PROCEEDINGS 441 (A.B.A. Sec. Ins., Negl. & Comp. L.).

10. Reed, *Specialization, Certification, and Exclusion in the Law Profession*, 27 OKLA. L. REV. 456, 468 (1974).

11. *Id.* at 459.

12. *Id.* at 456.

13. *Id.* at 468.

14. *Id.*

they tended to “rely too heavily on the use of words.”¹⁵ He urged them to recognize that human beings communicate by conveying and receiving information and cues of many different kinds. By 1970 numerous persons had leaped on John’s bandwagon. But Woodstock and flower power and the enthronement of the feelings had intervened, and John himself, somewhat to his chagrin, was having second thoughts:

I continue to be concerned about the failure of most lawyers now practicing to be aware of the emotional and nonverbal overtones of their verbal communications. But recent events have given me a new concern that the pendulum has swung too far, and the law schools will have to continue — for the present at least — in their emphasis upon the careful use of language.¹⁶

Even that sobering reflection about the decline in precision of expression came packaged with a laugh. John told of the man whose doctor informed him he was drinking too much. Knowing his wife would insist on learning the diagnosis, the man sought an appropriately esoteric pseudo-medical term to satisfy her. On the way home he spotted a music store ad for “all the latest syncopated hits.” “That’s it,” he said to himself, “I’ll tell her I’ve got ‘syncopation.’” But the wife’s curiosity led her to the dictionary, where she discovered as the first definition of “syncopation”: “irregular movement from bar to bar.”¹⁷

There is so much more that could be said about John Reed. How, for many persons in Ann Arbor, the Christmas season does not officially open until John and his wife Dot hold their annual carolfest. How his outside interests span such variegated institutions as the Army JAG School, the Baptist missions, and the University Musical Society, of which he is now President. How he remains one of the few nonpractitioners ever elected to serve on the Governing Council of the ABA Litigation Section. And how, on a couple of occasions, he was all but officially designated as one of the two most trusted and responsible members of the Michigan Law School faculty.

Still and all, the image I most treasure is of this lithe figure gliding smoothly about the dais, quietly working his communicative magic, and holding in thrall an audience that could consist either of untested youngsters or of combat-hardened veterans. In that context one wastes no time speculating about John Reed’s stature as a seminal

15. Reed, *supra* note 7, at 565.

16. Reed, *supra* note 9, at 450.

17. *Id.* at 446-47.

thinker. It is enough to know that he is one of the supreme lawyer-teachers of our time.