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David Bederman, Model Law Professor

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DAVID BEDERMAN, MODEL LAW PROFESSOR

*Thomas C. Arthur**

It is an honor and privilege to contribute to this Issue of the *Emory Law Journal* remembering my longtime friend and colleague, David Bederman. It is right that we should do so, for David was the model law professor, excelling as an advocate, scholar, teacher, colleague, and friend. He set the standard for all of us.

Let me start with David the advocate. In his office hung an artist's rendering of David arguing one of his cases before the U.S. Supreme Court, the kind of picture that we have all seen on television news accounts of Supreme Court arguments. To me at least, this is the ultimate lawyerly task. When I was in practice in Washington in the 1970s, a kind neighbor had me over for dinner when my wife was out of town. Also dining was an exchange student from Germany, who asked if I would like to appear before the Court. Almost reflexively, I said that "I'd kill for the chance," prompting my hostess to explain to the startled girl that "Mr. Arthur means that he'd like to very much." Indeed he would! But I could not be jealous that David had argued three cases there while I still fantasize about doing one, because he was so obviously better qualified to do it that I am. I know this because I had the good fortune to be part of the "moot court" bench before which he practiced his arguments. He was just a stunningly good appellate advocate, quick on his feet, articulate, clear, concise, and responsive not only to questions but to the questioner's underlying concerns.

There is a broader point here. Unlike all too many modern law professors, David was at home in the profession. He moved as effortlessly in the world of practicing lawyers, judges, and clients as he did in that of students and scholars. Had he remained in full-time practice, I have no doubt that he would have been on the lists of "super lawyers" that we see so often, and legitimately so. As a "real lawyer" he brought an important perspective to his teaching and scholarship, one that was especially valuable to his students, almost all of whom, after all, will spend their careers in practice.

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David was more than a great lawyer, though. Unlike many brilliant advocates, he had the intellectual curiosity that drove him to explore issues that engaged him, not just those of his clients. In short, he was a scholar, and a great one. I use the word “great” advisedly. For me a great scholar is not one who is merely prolific, although David was, and whose output uniformly is of high quality, as David’s was. What really makes a scholar great is the ability to see things that others do not—things which, once revealed, are obviously true. David saw those things and revealed them in his work. I will cite just two examples. The first was not a major discovery but one that I as a sometime federal courts teacher appreciated. Federal courts aficionados are familiar with the phenomenon of Article I courts, ones created by the Congress outside the provisions of Article III of the Constitution, yet somehow not unconstitutional. But until David pointed them out, we were oblivious to the existence of *Article II* courts. But they exist, as David showed.¹ And he was clearly correct.

The other example is far more significant and reveals another attribute of the great scholar: the courage to persevere in the search for truth in the face of conventional wisdom and even opposition. David’s Ph.D. adviser repeatedly discouraged him from pursuing his dissertation topic of international law in antiquity, arguing that “everyone knows” that international law did not predate Grotius and the other great international law theorists of early modern Europe, and that it certainly did not exist among the ancients. But it did, as David showed.² Once again, he was clearly correct.

I need to make one last point about David’s scholarship. Most scholars are content to achieve excellence in one area of the law; a few excel in two. But David was proficient in an amazing array of legal areas, ranging from ancient and modern international law, admiralty and maritime law, federal courts, and legal theory and method, to the intellectual origins of the American Constitution. Only his beloved mentor, the late Harold Berman, exceeded his range of scholarly excellence.

As one would expect, David’s combination of lawyerly and scholarly excellence equipped him to be a superb law teacher. David was a student favorite from the start, drawing a multitude of students in whatever he taught, and he taught *fourteen* different courses at Emory Law. But there is a difference between just popular teaching and really great teaching. David was not just popular with students, he brought them real substance. I had the

¹ See David J. Bederman, *Article II Courts*, 44 MERCER L. REV. 825, 831–32 (1993).

² See DAVID J. BEDERMAN, INTERNATIONAL LAW IN ANTIQUITY 16 (2002).

pleasure of being with David in the first group of Emory faculty to teach a new course in legal methods. As we met to structure this new offering, David quickly emerged as the intellectual leader of the undertaking. The course we all taught reflected his vision of what the course should achieve, what it should cover, and how it should be examined. David richly deserved the Emory Williams Distinguished Teaching Award, the University's highest honor for teaching, which he won in 2007.

David was also a superb colleague. I personally benefitted enormously from his collaborative efforts with his fellow professors. I have already mentioned his vital contribution to the joint effort to create our legal methods course. In my two years as Interim Vice Provost for International Affairs at Emory, I was charged with the task of leading the university-wide International Affairs Council in an effort to recommend structures to coordinate Emory's internationalization efforts. This task required a lot of intensive committee work as the Council mulled the reports that my staff and I prepared describing how several leading schools (Stanford, Duke, and Pennsylvania) had structured their internationalization projects. David quickly emerged as the leader in the Council's deliberations and produced a wonderful set of recommendations. Later, when I was dean of the law school and charged with coming up with a strategic plan for its development, David once again led a faculty committee to produce a wise and insightful vision for our future. And these are just a few of the instances of David's service and leadership. There are many more, as David was a leader in collaborative efforts not only in Emory Law School and Emory University but also in committees of national and international scholarly organizations and of the organized bar.

These efforts alone would have sufficed to make David a great colleague, but there was much more. David excelled in the little, unnoticed day-to-day informal contributions that make a colleague valuable. He was always happy to read and comment on a draft paper, especially for a junior colleague, to give friendly advice to a faculty colleague (or dean) when he really needed it, or to join in collegial discourse over lunch or a libation after hours.

Finally, these qualities that made David a great colleague also made him a wonderful friend. Not surprisingly, David had an amazing array of friends around the world. I was very lucky to be one.

Advocate, scholar, teacher, colleague, and friend, these are the words to describe David Bederman, and also a model law professor. We are lucky to have had him among us.