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TEACHER, ADVOCATE, FRIEND: REMEMBERING DAVID BEDERMAN

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David Bederman was a superb teacher, a skilled advocate, and a gracious human being. The three of us saw each of these qualities firsthand when Professor Bederman invited us to work with him on a case he argued before the Supreme Court of the United States, *Lapides v. Board of Regents of the University System of Georgia*,¹ while we were third-year law students.

Lapides involved the intersection of removal jurisdiction, sovereign immunity, and the Eleventh Amendment—complex, borderline esoteric topics more suited for a law school exam than an actual case. But a case it was, and Professor Bederman’s client had found himself on the losing end of a decision by the court of appeals. Professor Bederman took up the case, adamant that the court of appeals got the law wrong.

As in his classroom, during the course of our *Lapides* work, Professor Bederman combined the all-too-often mutually exclusive traits of being a brilliant scholar and a true love for teaching. His enthusiasm for the process of preparing the appeal was infectious; for him, it was the ultimate in “intellectual jujitsu.” He seemingly loved sitting with us in his office, leading a discussion on obscure (but terribly important) points of law, pushing us to make the necessary arguments in the first instance, rather than simply rephrasing or parroting back what we heard from him. Research led to additional questions, which led to more research, which led to what can only be described as, for our part, very rough drafts of a Supreme Court merits brief.

To watch Professor Bederman craft our attempts at persuasive writing into what he ultimately filed with the Court was to watch a master advocate at work. It no doubt would have been easier for him simply to take our research, refine our theories, and file his brief. But that, of course, was not him. He took

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¹ 535 U.S. 613 (2002).

our recitations of law and showed us how to turn them into arguments. He took our recounting of facts and showed us how to expand upon those that mattered, limiting those of less importance. He worked with us to transform our incongruent arguments into a comprehensive, persuasive presentation of the case. Looking back on the briefs today, it is clear to us now that the final product is the work of Professor Bederman alone. His writing was the mix that most lawyers spend years, or entire careers, attempting to achieve: pointed, but respectful; thorough, but not verbose; academic, yet still engaging and entertaining. He, however, instilled in each of us a sense of responsibility and ownership in the drafting process, and he gave us more credit than was due. In one such gesture, he included our names on the filed copies of the brief, an act of kindness that we treasure to this day.

The research and writing quickly progressed to readying for oral argument, and here, Professor Bederman taught us the value of thorough and unending preparation. At this stage, our primary task was to make the opposing points in mock oral arguments to the finest of Emory's faculty, a truly humbling experience. We fumbled answers, missed opportunities for easy scores, and generally were taken to task, all while Professor Bederman dodged, parried, and handled questions with ease. His ability to think on his feet was unparalleled, and he deftly batted back the curveballs thrown his way by his fellow faculty members. But he was not content to ease up after his impressive performance in moot courts. He knew that there were always unexpected questions, and he wanted us to research them all and help him improve his responses, no matter how small or insignificant the issue. As argument approached, it became clear there was no one who knew the case as well as he, and certainly nobody who could explain the arguments the way he could.

To our delight, Professor Bederman invited the three of us to accompany him to Washington, D.C., for the oral argument, along with his wife, Lorre Cuzze, and his daughter, Annelise Bederman. Our utility to him had long passed at that point, but he continued to treat us as members of his team. Looking back on the morning of the argument through the lens of our ten years of practice, what strikes us most is Professor Bederman's calm and comfortable demeanor. He surely recognized the importance and gravity of what he was about to do, yet at the same time he was able to enjoy the moment. He seemed excited, but not anxious, and he continued to display his signature sense of humor, putting everyone at ease by telling us a story about the tie he had selected to wear.

It was the first time at the Supreme Court for each of the three of us, and we were appropriately overwhelmed. We watched in awe as Professor Bederman went through his argument with unmatched competence and grace. He handled questions from the Court with skill and deference, utterly unflappable. One question, in particular, stands out. Justice Ginsburg asked him whether a state could be a “person” for purposes of 42 U.S.C. § 1983. This was an issue that received limited attention in our preparations and moot courts, but Professor Bederman ably engaged the Court as if he had spent his career preparing for that very inquiry.

After the argument, the three of us joined Professor Bederman, along with his family and his client, on the steps of the Supreme Court. He had just performed stellarly on the biggest legal stage in the United States, and he knew it. Even as inexperienced law students, we knew it. Professor Bederman was confident but humble, and respectful of opposing counsel beyond reproach. Rather than boast or bask in his well-deserved glory, he turned the conversation—even while standing on the steps in front of the Court—to critique and instruction. How did we think he handled the question about § 1983? What did we identify as the strongest argument raised by opposing counsel? Professor Bederman had concluded his argument with time remaining, and he also used this opportunity to lecture on the benefits of sitting down when you are out of things to say and the Court is done with questions, lest you do harm to what has, by all accounts, been a successful argument. While we could have stayed at that very location and talked and argued for hours, it was clear that what our professor next wanted was simply a picture with his family, arm-in-arm with his wife and daughter, and to spend some time enjoying the day with them.

That moment on the steps of the Supreme Court stands out for us as a time when Professor Bederman truly wore all three of his hats at once—teacher, advocate, and dedicated family man. We did then, and do now, appreciate that we could be part of that day.

In *Lapides*, Professor Bederman prevailed, a fact that he relayed to us with pride when the Supreme Court issued its unanimous opinion on the day that the three of us graduated from law school. He invited us to join his family at his home after the graduation ceremonies for a victory celebration, which was a most gracious and memorable way to conclude a truly remarkable experience with a truly remarkable man.

Each of us had other interactions with Professor Bederman during our tenure at Emory—in the classroom, as an advisor, and while working with him on yet another case that he argued before the Supreme Court. But the *Lapides* experience stands out as a perfect amalgamation of everything that made David Bederman the person and mentor that he was. It was a chance for him to teach and to advocate at the same time, all while displaying the human qualities for which we as lawyers, and, more importantly, as people, should strive every day. He excelled in everything he did professionally and with dignity, yet he lived his life humbly and with humor. He was the prototype of what a professor should be: a dedicated teacher inside and outside the classroom, and a person who earned and garnered the respect and admiration of all those he encountered. We are better off for having had his guidance and friendship, and along with the entire Emory community, we will miss him dearly.