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DAVID BEDERMAN: REMEMBRANCES OF A FRIENDSHIP THAT BEGAN AT COVINGTON & BURLING LLP IN WASHINGTON, D.C.

Peter D. Trooboff[*]

David and I became friends when he was a summer associate at Covington & Burling LLP during the summer of 1987. As our hiring partner during this period, I was asked to maintain the liaison with David during his two years as a clerk, first with Judge Wiggins, and then at the Iran–United States Claims Tribunal. I recall long conversations with him over whether the extra year clerking in The Hague would be worthwhile. We agreed that it would be enjoyable. As in so many other endeavors, David made the experience valuable professionally and used the lessons from that year time and again in practice and academic life.

David and I renewed our friendship when he came to Covington in 1989 as an associate before joining the Emory Law faculty. By a happy coincidence, I met Lorre before David did. If memory serves me correctly, she was in The Hague in the summer of 1986 when I gave lectures at the Hague Academy of International Law on foreign-state immunity. I well recall a luncheon that she and another friend invited me to attend during that period of teaching. So when I learned of David's marriage to Lorre, it was a happy combination of two friends.

From his first days in Washington, my partners could see that David was an energetic and hard-working lawyer. They recognized his imagination and resourcefulness. They commented on his quick study of even the most complex issues and his flair for promptly and effectively addressing the task at hand.

Despite the relatively short period of his practice with Covington from December 1989 to June 1991, David worked with a remarkable number of our partners and on an especially rich variety of matters. While his major

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contribution was to international matters at Covington, I would be remiss if I failed to note his significant role in two important pro bono cases. In *Trout v. Lehman*, we were lead counsel for five of thirty-five female Navy employees who, before we entered the case, had been found to be the victims of intentional sex discrimination.[1] Jeffrey Huvelle led our team, which was brought into the case to handle the amount of back pay due to our clients. The Government had fought the case for eighteen years and seemed ready for another decade of wrangling over the damages due to the victims of the improper actions. David worked effectively with the Covington team in confronting the Government's full-court defense on the back pay issues. Only after the Government realized how well our team had prepared for this next phase did the Government concede the amounts due. Judge Greene was apparently quite clear that the Government had conceded in part because it was unwilling to take on the Covington team on the damages issues, which my colleagues and others saw as yet another indication of the bad faith with which the Government had resisted settling this case for so many years. David's correspondence with the clients reflects his sympathy for their situation. His letters to the clients also reveal the importance that he attached even at this early point in his career to seeing the case from their perspective and his sensitivity to their needs in the litigation.

In the *Robert Baker* case, David, working principally with David Isbell, conducted critical research that led to persuading the District of Columbia Court of Appeals (DCCA) to admit our client to the District of Columbia Bar and, in doing so, reject the adverse recommendation of the Committee of Admissions.[2] Our client was a lawyer whose admission had been denied by the Georgia Bar, which had, in brief, rejected his application because he allegedly gave misleading and incorrect answers during the admissions process. We undertook the case at the request of one of the judges who felt that our client was being inadequately represented by himself. You would have to read the DCCA opinion to appreciate the complex legal arguments that needed to be developed to show that the D.C. court should not rely on the conclusions of the Georgia Bar. In the end, the DCCA worked its way through the logic of the argument and ruled that Mr. Baker should be admitted to the D.C. Bar. I am sure David viewed the case with considerable feeling in view of his deep

[1] 652 F. Supp. 144 (D.D.C. 1986) (reviewing the complex history of the case and the basis after remand for entry of judgment for the plaintiffs).

[2] *In re* Robert Baker, 579 A.2d 676 (D.C. 1990).

Georgia roots and his strong commitment to justice for a fellow lawyer who needed assistance in explaining a complex factual and legal situation.

David worked with our late partner David McGiffert on the *Westinghouse* claim in the Iran–United States Claims Tribunal. Even though a relatively junior associate, David's insights from his days as a clerk at the Tribunal were especially valuable to even as senior a partner as Mr. McGiffert, who had served with distinction in senior positions at the Defense Department. David also assisted Tom Johnson and my late partner Brice Clagett on maritime-boundaries opinions and collaborated with Brice as well on an arbitration against a Japanese construction company.

Among the most interesting matters that he handled while at Covington was his research for Brice on a unique real estate matter. Brice had a reputation for being extremely conservative politically and difficult to work for. David got along famously with Brice, which was a credit to David's skill and diplomacy. Few at Covington knew or even today know about this matter. One of our real estate partners brought the matter to me, and I saw quickly that this was a case for Brice, who immediately sought David's assistance.

The case concerned real property occupied by the German Democratic Republic (GDR), which was never recognized by the United States as a separate nation-state. However, the GDR had an "embassy" in Washington that by 1990 was located in a building that our client owned on Massachusetts Avenue near Dupont Circle. This GDR presence probably began in the 1970s after West Germany, under Chancellor Brandt, adopted its Eastern Policy that led to the normalization of relations between West and East Germany and to East German admission to the United Nations ("two German states in one German nation"[3]). Many of us in Washington suspected that the GDR Embassy was used, in part, to provide another base for Soviet spies in this country.

Our client had a multi-year lease with the GDR for its embassy. Yet, on Unification Day, October 3, 1990, the GDR ceased to exist and its territory was absorbed within an expanded Federal Republic of Germany, whose legal personality continued. In view of this theory of reunification in 1990, it is not surprising that the West German government announced that it would be assuming all East German debts. At the same time, the private position of the

[3] RANDALL NEWNHAM, DEUTSCHE MARK DIPLOMACY 155 (2002) (quoting Chancellor Brandt's inaugural speech).

GDR with our landlord client in the months prior to unification was that it no longer had any liability under the lease—in a word, the GDR would disappear and so did the counterparty to the lease. In view of the German government's position, our client understandably looked to the Federal Republic to assume the GDR liability. Without disclosing any confidences, I can say that our client did not necessarily find the Federal Republic and its embassy entirely consistent in its public and private positions.

Because there was a settlement of the matter that our client brought to us, I am not in a position to reveal all the details or the final outcome regarding the rent for the GDR Embassy. Suffice to say that there came a time when David was asked to research whether, in fact, the government of Germany, as reunified, would be liable in international law for the rent due from the East German government for its embassy in Washington. Further, I can say that our client was not constrained to bring suit against the West German government for remaining rent due under the GDR lease. I can also reveal that Brice and David's analysis had much to do with why such litigation never occurred. I can also disclose that our client was quite prepared to test in court, if necessary, the legal theory that it thought the German government had publicly adopted, in public and in private. Finally, I can say that our client concluded the matter with considerable admiration for what Brice and David had achieved not only in solid legal analysis but also favorable financial results.

After David left Covington, we remained in touch for a variety of projects. I was so pleased when he was elected to the board of the *American Journal of International Law*. In recent years he had undertaken the onerous task of preparing and editing the *AJIL* International Decisions section, which I had the privilege of editing at an early time. David expanded the coverage of that section and persuaded many able writers to contribute. I do not comment on his many books and articles because others will surely do so. I will simply state that the success of his publications demonstrates better than anything could that his decision to enter academic life was a wise choice—for him and for the profession.

Within the past year, David kindly assisted my partners on very short notice and on a tight timetable by preparing an expert opinion concerning the Foreign Sovereign Immunities Act and its inapplicability to the issuance by a U.S. district court of letters rogatory to a government-owned corporation in Canada. My partners were impressed with David's quick understanding not

only of the legal issues but also of key strategic issues that arose in how his expert opinion should address the issues.

I would be remiss if I did not conclude by making two final points. First, I have mentioned my partner Brice Clagett, whose political views and style of practice were always viewed as different from most lawyers in Covington or, for that matter, from most lawyers practicing at the D.C. Bar. My colleagues and I saw, as did so many others who worked with David, that he also had a unique and memorable personality and that his style of practice and scholarship were, in a word, different from many less memorable lawyers. In time, I came to see, as did his many colleagues, that David had learned to adjust and reconcile his style and to work effectively with those who were more conventional in their thinking and approach to legal issues. That adjustment was not easy for David and played a major role in his success as a scholar and collaborator.

Second, I join with David's many friends in expressing my admiration for David's devotion to Lorre and Annelise and for the courage that he has shown during his multi-year battle with his disease. Only David could have risen, as he did, to the challenge of presenting with such flair and cogency his inaugural lecture for the lecture series that Emory Law has so appropriately established in his honor. I was privileged to be among the remarkable outpouring of family and friends, including faculty colleagues, who came to that event at Emory Law. It was a marvelous celebration despite the sadness that I am confident each of us felt as we watched David's able presentation. I suspect that many in the audience wished, as I did, that we could somehow do something to cause him to prevail in his long, debilitating struggle.