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In Memoriam: Dr. David J. Bederman (1961-2011)

Robert M. Jarvis*

I

On December 4, 2011, Dr. David J. Bederman, the K.H. Gyr Professor of International Law at Emory University, passed away at the age of 50.¹ Since 2000, David had been a member of the *Journal's* Editorial Board; from 1995 to 1999, he was the *Journal's* Case Note Editor.²

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It is with a profound sense of loss that I dedicate this tribute to David's wife Lorre and daughter Annelise. Family was very important to David. When he memorialized his mentor Professor Harold J. Berman, for example, he focused not on his numerous professional achievements but on his long and happy marriage. See David J. Bederman, *The Customary Law of Hal and Ruth*, 57 EMORY L.J. 1399 (2008).

¹ See J.E. Geshwiler, *Dr. David Bederman*, 50 ATLANTA J. CONST. Dec. 11, 2011, at B10. In 2005, David was diagnosed with appendiceal cancer. For the next six years, he battled this terrible disease with incredible courage and rare dignity.

Halfway through his illness, David was appointed to the Gyr chair. For his inaugural lecture, he chose the topic of piracy. In a masterful speech, he demonstrated, through his remarkable ability to apply historical facts to contemporary legal issues, just how much law existed in these supposedly lawless communities and why a proper understanding of their activities is critical in combatting modern criminal organizations. See David J. Bederman, *The Pirate Code*, 22 EMORY INT'L L. REV. 707 (2008).

² Besides soliciting case notes from others, David penned five of his own: *Faneuil Advisors, Inc. v. Sea Hawk*, 26 J. MAR. L. & COM. 621 (1995) (with Jeffrey S. Dehner); *Maritans v. Balsa* 37, 27 J. MAR. L. & COM. 353 (1996) (with John L. Mallinson); *Marine Coatings, Inc. v. United States*, 27 J. MAR. L. & COM. 661 (1996) (with Philip J. Bauer); *Pierpoint v. Barnes*, 28 J. MAR. L. & COM. 369 (1997) (with Elizabeth A. Snodgrass); *In re Air Crash Off Long Island*, 30 J. MAR. L. & COM. 143 (1999) (with Andrew L. Cole). In each instance, David's co-author was one of his students, who he gave full byline credit.

David's intellectual curiosity led him to explore many fields, including constitutional law, international law, and legal history.³ But whenever I think of David, I think of him as an admiralty lawyer.⁴

I first encountered David from afar when I read his scholarly study on the evolution of compulsory pilotage.⁵ David had begun the piece while clerking for Judge Charles E. Wiggins of the U.S. Court of Appeals for the Ninth Circuit; had refined it during the year he spent as a legal assistant at the Iran-U.S. Claims Tribunal at The Hague; and had finished it during his early days as an associate at the Washington, D.C. law firm of Covington & Burling.

Had he been so inclined, David could have made partner with ease. But in 1991 he accepted an invitation to join Emory's faculty. David remained there for the rest of his life, although during various semesters he left to serve as a visiting professor at New York University, the University of Virginia (his law school alma mater), and York University.⁶

³ See, e.g., DAVID J. BEDERMAN, *INTERNATIONAL LAW IN ANTIQUITY* (Cambridge University Press 2001); DAVID J. BEDERMAN, *THE CLASSICAL FOUNDATIONS OF THE AMERICAN CONSTITUTION* (Cambridge University Press 2008); DAVID J. BEDERMAN, *INTERNATIONAL LAW FRAMEWORKS* (Foundation Press 3d ed. 2010). The first of these books grew out of David's Ph.D. dissertation at the University of London, which awarded him a doctorate in 1996.

⁴ In addition to the *Journal*, David and I worked together on Volume 8 of *Benedict on Admiralty* and were co-authors, with Professors Joel K. Goldstein and Steven R. Swanson, of an admiralty casebook published by LexisNexis in 2004. David was a wonderful collaborator. He wrote quickly, never missed a deadline, and produced highly polished drafts that needed little-to-no editing.

⁵ See David J. Bederman, *Compulsory Pilotage, Public Policy, and the Early Private International Law of Torts*, 64 *TUL. L. REV.* 1033 (1990). David was fascinated by the connection between admiralty and international law and repeatedly returned to the subject. See, e.g., David J. Bederman, *The Feigned Demise of Prize*, 9 *EMORY INT'L L. REV.* 31 (1995); David J. Bederman, *The Souls of International Organizations: Legal Personality and the Lighthouse at Cape Spartel*, 36 *VA. J. INT'L L.* 275 (1996); David J. Bederman, *Law of the Land, Law of the Sea: The Lost Link Between Customary International Law and the General Maritime Law*, 51 *VA. J. INT'L L.* 299 (2011).

In 1995, I asked David for permission to include his compulsory pilotage article in the admiralty anthology that I was preparing for Anderson Publishing Company. As was typical, David demurred, believing that the piece was not good enough, and suggested articles by other authors that he thought were more worthy. It was the only time I did not follow his advice.

⁶ David's numbers at Emory give some sense of the extraordinariness of his career. In his twenty years at the school, he "taught 4,000-plus students in 15 different courses, wrote 12 books and 125 scholarly articles, gave 80 public lectures and held three prestigious visiting professorships, and was counsel of record in 52 federal court cases, four of them before the U.S. Supreme Court." Geshwiler, *supra* note 1.

As impressive as these numbers are, I am in awe of a different one. Shortly before his death, the law school created the David J. Bederman Fund to endow a lectureship in David's name. In the first week after it was established, David's fellow faculty members pledged \$100,000 to the Fund. See *Law School Builds David Bederman Fund*, 87 *EMORY MAG.* 58, 58 (Autumn 2011).

II

David greatly enjoyed being a maritime law professor⁷ and, as his multiple teaching awards attest, he was terrific in the classroom. As students quickly found out (and as his colleagues knew well), David's keen mind was joined to a generous spirit and a sly sense of humor.

Much of David's admiralty writings concerned jurisdiction,⁸ federalism,⁹ and pollution (the subject of his master's thesis at the London School of Economics).¹⁰ But his real passion was treasure salvage (or as he preferred to call it, historic salvage). David took an intensely pragmatic view of recovery expeditions and firmly believed they could, if done right, play a critical role in protecting, preserving, and perpetuating history.¹¹

In 1992, David served as co-counsel in *United States v. Steinmetz*,¹² a case arising from the recovery of a bell belonging to the Confederate commerce raider ALABAMA. After that experience, David quickly became *the* legal authority on the subject. As a result, he was retained in disputes involving the American steamers LADY ELGIN and SEABIRD;¹³ the Canadian mail ship ISLANDER;¹⁴ the Spanish warships JUNO and LA GALGA;¹⁵ the

⁷ See David J. Bederman, *Guilty Pleasures of Teaching Admiralty*, 55 ST. LOUIS U. L.J. 559, 559 (2011) ("For me, teaching admiralty is an energizing experience, a constant reminder of all the good and noble reasons why I wanted to become a law professor, and why what we do in the classroom matters.").

⁸ See, e.g., David J. Bederman, *Admiralty Jurisdiction*, 31 J. MAR. L. & COM. 189 (2000); David J. Bederman & John Wierwille, *The Contemporary Contours of Admiralty Jurisdiction*, 31 TUL. MAR. L.J. 291 (2007); David J. Bederman, *The "Common-Law Regime" of Foreign Sovereign Immunity: The Actual Possession Rule in Admiralty*, 44 VAND. J. TRANSNAT'L L. 853 (2011).

⁹ See, e.g., David J. Bederman, *Uniformity, Delegation and the Dormant Admiralty Clause*, 28 J. MAR. L. & COM. 1 (1997); David J. Bederman, *Admiralty and the Eleventh Amendment*, 72 NOTRE DAME L. REV. 935 (1997); David J. Bederman, *Romero's Enduring Legacy*, 39 J. MAR. L. & COM. 27 (2008).

¹⁰ See, e.g., David J. Bederman, *Dead in the Water: International Law, Diplomacy, and Compensation for Chemical Pollution at Sea*, 26 VA. J. INT'L L. 485 (1986); David J. Bederman, *High Risks in the High Arctic: Jurisdiction and Compensation for Oil Pollution from Offshore Operations in the Beaufort Sea*, 4 ALASKA L. REV. 37 (1987); David J. Bederman, *International Control of Marine "Pollution" by Exotic Species*, 18 ECOLOGY L.Q. 677 (1991).

¹¹ See, e.g., David J. Bederman, *Historic Salvage and the Law of the Sea*, 30 U. MIAMI INTER-AM. L. REV. 99 (1998); David J. Bederman, *The UNESCO Draft Convention on Underwater Cultural Heritage: A Critique and Counter-Proposal*, 30 J. MAR. L. & COM. 331 (1999); David J. Bederman, *Maritime Preservation Law: Old Challenges, New Trends*, 8 WIDENER L. SYMP. J. 163 (2002).

¹² 973 F.2d 212, 1992 AMC 2879 (3d Cir. 1992), cert. denied, 507 U.S. 984, 1993 AMC 3000 (1993).

¹³ See *People ex rel. Illinois Historic Preservation Agency v. Zych*, 710 N.E.2d 820, 1999 AMC 2236 (Ill. 1999).

¹⁴ See *Yukon Recovery, L.L.C. v. Certain Abandoned Property*, 205 F.3d 1189, 2000 AMC 883 (9th Cir.), cert. denied, 531 U.S. 820, 2001 AMC 3000 (2000).

¹⁵ See *Sea Hunt, Inc. v. Unidentified Shipwrecked Vessel or Vessels*, 221 F.3d 634, 2000 AMC 2113 (4th Cir. 2000), cert. denied, 531 U.S. 1144, 2001 AMC 2999 (2001).

English liner TITANIC;¹⁶ and the Spanish frigate NUESTRA SENORA DE LAS MERCEDES.¹⁷

In 2006, David was elected to the board of directors of Odyssey Marine Exploration, Inc., the Tampa treasure salvor, and in 2010 became its chairman. In eulogizing him, Greg Stemm, the company's chief executive officer, observed that David's "passion for our mission and his unparalleled sense of fairness and understanding of international law . . . guided us through many situations that really had no legal precedent."¹⁸

III

David was a native Atlantean (although for college he ventured north to Princeton University), which often made people wonder how he became interested in admiralty. In a piece published just before he died, David offered an explanation, and his answer says much about who he was and how he viewed his role as a member of the maritime bar:

I teach at an institution which, though not situated at a coastal location, has had a long tradition of quality admiralty teaching. When students approach me—either planning next semester's courses or "shopping" for classes in those first, frenetic weeks of the term—and ask me why they should take a course on admiralty law, I have two typical responses. The first is cagily instrumental: I inquire whether they are in the hunt for a federal judicial clerkship. If so, I innocently suggest that, based on my experience, having a course in maritime law under their belt might be just the ticket to distinguish their resume from thousands of other aspiring law clerks. I actually know this from experience. I have often "closed the deal" for an Emory applicant after speaking with a judge (usually from a coastal district or circuit with a heavy maritime case load) about a student's knowledge of admiralty law. One such judge was uncharacteristically blunt: "I usually like to have at least one law clerk who knows something about admiralty or bankruptcy," he ruminated, and then rejoined, "Your candidate has both—tell her she can expect a call from me soon." She did; she was hired.

The gender of that clerkship candidate is not coincidental for my story here. The other thing I tell my students is that if they are interested in litigation, then maritime law offers one of the most attractive avenues for a civilized and humane trial and appeals practice. The small size and coherence of the admiralty bar is one reason for this, and additionally, it is well-document-

¹⁶ See *R.M.S. Titanic, Inc. v. Wrecked and Abandoned Vessel*, 435 F.3d 521, 2006 AMC 305 (4th Cir. 2006).

¹⁷ See *Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel*, 657 F.3d 1159 (11th Cir. 2011).

¹⁸ See *Odyssey Board Chairman and Maritime Legal Expert Dr. David J. Bederman Passes*, Dec. 7, 2011, available at <http://www.shipwreck.net/pr238.php> (last visited Dec. 15, 2011).

ed that courtesies that would not normally be extended in other litigation arenas are routinely granted among maritime practitioners. The one thing that has not been positive about the demographic of the admiralty bar is that, until recently, it has not attracted many female entrants or retained strong women practitioners. I say “until recently” because I like to think (in some small measure) that I have tried to recruit, through my teaching, quality candidates for the profession, especially women. And, to a very gratifying extent, I have succeeded.¹⁹

Although David once described himself as a “total landlubber [whose] idea of sea adventure is going to the deep end of the pool,”²⁰ he loved the ocean.²¹ Indeed, his favorite place to unwind was Fernandina Beach in north Florida. I will miss David very much, and will think of him often, especially when I am at the shore.

¹⁹ Guilty Pleasures, *supra* note 7, at 560.

²⁰ See *Emory Law Mourns the Loss of Professor David Bederman*, Dec. 6, 2011, available at http://www.law.emory.edu/about-emory-law/news-article/article/emory-law-mourns-the-loss-of-professor-david-bederman.html?tx_ttnews%5BbackPid%5D=6253&cHash=3d197f29c103b694bfac722fd889081c (last visited Dec. 15, 2011).

²¹ At the time of his death, David was the chair of the ABA Section of International Law and Practice’s Law of the Sea Committee as well as the general counsel of the Antarctica and Southern Ocean Coalition (the world’s largest NGO devoted to protecting the polar environment).

