

ROBERT B. ROCKLIN\*

## Riding with the Judge

I always referred to David Schuman as my cycling partner; after all, we probably rode between 10 and 15 thousand miles around the Willamette Valley together over the years. But he was, of course, much more than that: friend, colleague, and at times, my boss.

I met David after he had been appointed Deputy Attorney General at the Oregon Department of Justice in 1997. I was an assistant attorney general in the Appellate Division and David asked me to draft a letter for his signature to then United States Attorney General Janet Reno regarding Oregon's new Death with Dignity law. We ultimately became cycling buddies. In addition, I carpooled with David for several years between Eugene and Salem—he was a judge at the Oregon Court of Appeals, and I was a staff attorney. Finally, we both ended up teaching at the University of Oregon School of Law. There were a number of years when I spent two-and-a-half hours commuting with him, had an office next to his, and rode with him most Saturdays. But I never tired of David's company. I'll always remember him as a kind, compassionate, brilliant man with a great sense of humor. Today, I'd like to share some memories of David Schuman the cyclist.

David was the quintessential appellate judge and law professor. Accordingly, in preparing these remarks I did as David would have me do—I went back to the record: text messages and emails we exchanged over the years. There are hundreds, but I'll try to be selective, focusing only on some of our more recent communications.

In the summer of 2014, David's bike was stolen. I texted David that my then three-year-old son Sam “wanted to know if you're sad that someone stole your bicycle and said that he hopes you feel better.” Ever

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the philosopher, David responded: “Tell Sam that I am sad, but I realize that shit happens.”

Not every ride that David took was all sunshine and tailwinds; indeed, he was pretty much the opposite of a fair-weather cyclist. On a cold, blustery January day in 2015, I chose (wisely, I believe) not to ride. David, who would ride in any weather, texted me later: “Worst. Ride. Ever.”

David was very fast. But he was as devoted a cycling partner as he was a fast one. In August 2015, we had planned to ride a full century (100 miles) together. “Bob,” he wrote,

I can no longer live with my guilty conscience. I feel as though I’m living a lie. I must confess and seek absolution. I have betrayed you. There. I said it.

Here are the sordid details. On Tuesday, after contemplating the Weather Underground forecast for this weekend (rain, south wind), and remembering that I will be out of town the next weekend (trip to Deep Springs) and the weekend after that (Austin), followed by a mere one weekend before going to Italy—and recalling that you are available on weekends only—I gave in to temptation. I performed the 2015 Eugene-Crawfordsville-Brownsville-Harrisburg-Coburg Century.

If you can find it in your heart to overlook this one transgression, let’s ride tomorrow. I’m afraid that, because of the predicted weather and the lingering fatigue resulting from my shameful Century transgression, I would prefer a ride on the short side (50 or so), beginning at around 8:30. I am not available on Sunday, so if you can’t join me, or if my sin has been so shameful that you cannot forgive, then I will once again have to brave the elements by my miserable self.

David was not what one would call flexible in his cycling habits, and he acknowledged as much. He insisted that we leave at pretty much the same time in the morning each time we rode, and we rarely tried new routes. But as he aged, David became more flexible. On a cold January morning in 2016, I suggested a start time that was in our usual range. I nearly fainted when I saw David’s reply: “I was thinking about a later start in order to minimize sub-freezing temps. Like, maybe, 11:00? 40–50ish [miles]? But, as you know, I’m flexible.”

David was a great descender. He was slow as molasses going up hills, but boy he loved to speed down them. The hills in south Eugene include a road called Fox Hollow. We independently (or occasionally together) would ride up and then back down Fox Hollow for a short ride that involved about 1,200 feet of climbing in about 18 miles of cycling. On a September day in 2016, after riding Fox Hollow, I texted

David: “I assert that it was YOU I saw barreling down Fox Hollow about 45 minutes ago. How do you plead??” David’s response: “Not guilty. I wasn’t going more than 41.8 [mph]. Also, Sunday will be ok for our ride.”

The following exchange took place on the first day of June 2018:

David: 8:30? I’m flexible, as always, so any time between 8:23 and 8:36 is ok too.

Me: Flexible is your middle name. If we’re really going to Corvallis, shouldn’t we leave earlier?

David: 8:02?

Me: Yeah, maybe a compromise: 8:14–8:16?

David: Works for me.

David was a great cycling partner—except for one thing: he was too damn fast. In fact, in 2018 he set a world speed record. On May 8, 2018, David emailed to tell me that he had read that the world record in the over-70 age group for a metric century (100 kilometers or 62 miles) was 3 hours, 35 minutes. He wrote, “Intrigued, I wondered what I could do on my 74th birthday.” His time: 3:25—ten minutes faster!

David was a proud father and grandfather. David’s daughter, Rebecca, an accomplished author, had learned from her father the finer points of the judicious use of colorful language. In May 2018, Rebecca, who was living in St. Louis, Missouri, was interviewed by *St. Louis Magazine*. I texted David: “Nice interview with Rebecca in *St. Louis Magazine*.” Now, it is sometimes hard to discern nuanced tones in text messages. Nonetheless, I interpreted his text message reply as a perfect mixture of both pride and disappointment: “Agreed! No f-bombs!”

We tried to ride Wolf Creek once each summer, an “epic” ride of about 70 miles with 3,500 feet of climbing out in the middle of nowhere, southwest of Eugene. David refused to ride that route alone, and, in an email in August 2018, it became clear why when I suggested Wolf Creek for the following Saturday: “Wolf Creek would be OK, although I fear bears/bobcats/cougars.”

David had cataract surgery about a month before his death. He had surgery on one eye on Wednesday, and the surgeon told him not to ride for a week. So, on Sunday (you’ll note that is less than a week), he suggested a “short, slow ride.” He rode with a patch over one eye (see what that does to your depth perception!), and we rode “only” 50 miles at an average speed of “only” about 16.5 mph.

My last text exchange with David was just a week or so before his death, on erev Rosh Hashanah, the night before the first day of the Jewish new year. Here's what he said: "You can get your New Year exercise tomorrow by going to shul and davening<sup>1</sup> all day, or by joining me on a cold but sunny BIKE RIDE. Which will it be?" I responded that it was a hard choice and then asked what time we were leaving. His response: "9:30. Bring your yarmulke."

As I said many times over the last two decades, "Thank you, David. Thank you for the ride."

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<sup>1</sup> Ever the academic, David would be disappointed if this piece had no footnotes. Here goes: "shul" is a Yiddish (and apparently English) word for synagogue. *Shul*, MERRIAM WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/shul> (last updated June 28, 2020). To "daven" is to "recite the prescribed prayers in a Jewish liturgy." *Daven*, MERRIAM WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/daven> (last visited July 22, 2020).