

GARRETT EPPS*

At the Still Point, There the Dance Is:
A Remembrance of Judge David
Schuman

This is the third time I have been asked to give a tribute to David Schuman. The first was given when he left the University of Oregon School of Law (“Law School”) to become Deputy Attorney General. That talk was entitled, “Top Ten Reasons Why UO Faculty Says ‘Good Riddance’ to David Schuman.” That may seem like an unusual title for a tribute, but the top reason was, “Now *finally* someone else will have a chance to be considered the best and most beloved teacher at the University of Oregon Law School.”

The second was given at an Oregon State Bar event recognizing David’s retirement from the bench. I told the audience that, having introduced the Oregon appellate bench to the custom of the afternoon nap, its originator was returning to the place of its origin, where over the years a post-lunch nap had come to be called “a quick Schuman.”

So perhaps the reader will understand the tone of this tribute. I, like Judge Schuman himself, take my cue from the poet Robert Frost, who once wrote of Robinson Jeffers that, “If it is with outer seriousness, it must be with inner humor. If it is with outer humor, it must be with inner seriousness. Neither one alone without the other under it will do.”¹

That’s particularly true when the tribute is to one of the most adept masters I have ever known of the deadpan, of humor that at first is

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¹ WILLIAM H. PRITCHARD, *FROST: A LITERARY LIFE RECONSIDERED* 199 (2nd ed. 1993).

mildly amusing but that eventually settles in to become a sustained memory of a good laugh at the absurdity of life. I will start this third tribute as he would have liked, with a few examples of his sense of humor.

I first realized David had unsuspected inner depths of mischief when, during my first year at the University of Oregon (“UO”), he asked me to call (and, as I recall, wake up) his daughter Rebecca in order to sing “Sixteen Candles” over the phone in honor of her birthday.

“Won’t she just think I am a random pervert?” I asked him.

“What’s your point?” he replied. He was my senior tenured colleague, so I complied. My friendship with Rebecca, mercifully, recovered at some point over the next ten years. In point of fact, it was Rebecca, a decade later, who acquired my book, *To an Unknown God: Religious Freedom on Trial*,² for publication by St. Martin’s Press, for which I will always be grateful. That connection was, I thought, fitting—because it was David, even before I had been hired by the UO, who first suggested that *Employment Division v. Smith*,³ and what I later called the “hidden history” of its origin in Oregon, would make a good subject for a nonfiction book.⁴

That same year I and my children bonded with David over an important family value—our mutual love for Mexican restaurants. He told me once that his favorite sentence in the English language was, “Be careful sir, the plate is very hot.”⁵

Much to his regret, David later became associate dean of the Law School. This was a time when inner humor was rife, and outer seriousness was necessary, because the institution was riven on the inside by personal and political quarrels—any one of which might have, like an Oregon forest fire, blazed beyond containment if it had been allowed to flare up in the oxygen of publicity. David served as the containment, a role in which he was timeless and effective. He knew how to appeal to the better natures of faculty—I name no names—for whom the concept of *obligation to the institution* was at best an abstraction. I won’t say I numbered among that group, but I do recall one occasion on which the faculty had gotten into a flame war over email. I cannot for the life of me remember what we were fighting

² GARRETT EPPS, *TO AN UNKNOWN GOD: RELIGIOUS FREEDOM ON TRIAL* (2001).

³ 494 U.S. 872 (1990).

⁴ See Garrett Epps, *To an Unknown God: The Hidden History of Employment Division v. Smith*, 30 ARIZ. ST. L.J. 953 (1998).

⁵ See *Blue Iguana, Inc. v. Or. Liquor Control Comm’n*, 258 Or. App. 535, 310 P.3d 720 (2013).

about, but it was of so little lasting importance that the fight had flared to a near-homicidal level.⁶

I do remember my antagonist had left himself wide open for a truly crushing riposte, one that I can promise you various academics would be speaking of with wonder in the faculty lounges of the nation to this day. I was preparing to deliver it, in fluent Italian to make the insult graver, when I got an email from then Associate Dean Schuman. “There is a fellow human being standing on a ledge,” he said. “You have the opportunity to shove him off. Is that what you want to do?”

It actually *was* what I wanted to do, but David rather gently spoiled my fun. That was his gift as a leader—he understood, enunciated, and made clear the unworthy thing his colleagues wanted to do and then led them in Socratic fashion to reexamine it. As a leader, he made me a better person and the Law School a better institution. And he did it without much huffing and puffing.

This is not to say that he was incapable of an occasional gentle jab. I once saw him at a Continuing Legal Education seminar praise an earlier speaker’s summary of a given area of the law as “concise and almost correct.”

David was a prodigious athlete. During the time I knew him, he was by turns a speed skater, a marathon runner, and finally a devoted cyclist. One of my “Top Ten” reasons the faculty rejoiced at his departure was that he was always able to top our flimsy faculty-lounge boasts of exercise over the weekend. I once rode my bike to Harrisburg, but as I recall Schuman popped up on Monday having ridden his to Chicago. Perhaps I exaggerate, but at any rate, the letdown was palpable.

In most things (Mexican food aside) he was a man of moderate habits—but he did enjoy the fruit of the grape, particularly Oregon pinot gris. I saw it affect him only once: at an official dinner to celebrate Justice Hans Linde’s visit to the Law School. The dinner was hosted by one of our colleagues, who was sitting next to David, and who insisted on ordering bottle after bottle of expensive Pinot Gris. I was sitting at the other end of the table next to Justice Linde. I don’t know whether anyone here has tried to keep up with Justice Linde’s mind,

⁶ See Sayre’s Law, as enunciated by political scientist Wallace S. Sayre: “In any dispute the intensity of feeling is inversely proportional to the value of the stakes at issue—that is why academic politics are so bitter.” CHARLES ISSAWI, ISSAWI’S LAWS OF SOCIAL MOTION 178 (1973).

but it's hard enough to do sober; so by the end of the evening, I had hardly eaten, much less drunk, anything.

When the dinner ended, I volunteered to drive David home. As we were driving home, I told David that not driving had been a prudent move for him. "Nonsense," he replied. "I am as sober as a judge." He thought for a minute and said, "That's because I am a judge." We reached home without mishap and never spoke of that time again.

Being a judge was a very important achievement to David. I think it was what he was born to do. It was his calling. In the First Book of Kings, Solomon, the greatest King of Israel, prays to God not for wealth, power, or success in battle, but for what we might today call judicial temperament: "Give therefore thy servant an understanding heart to judge thy people, that I may discern between good and bad."⁷

David had an understanding heart. An understanding heart is neither hard nor soft; it is perceptive, grounded, and proportional. It does not mistake law for compassion—but it does not fall into the fallacy of believing that the two are unrelated. David's fairness extended to sympathetic and unsympathetic litigants alike, and he performed it not only without suffering unduly but also without becoming numb to the humanity of those who came before his court.

He loved judging, and he savored each of the more than 600 opinions he wrote. He never regarded any case as unimportant. In his first couple of years on the bench, he was "conflicted out" of most cases because he had been Deputy Attorney General, so he ended up dealing mostly with workers' compensation cases. Many were the Glenwood lunches I spent listening to stories of how the claimant had been cruelly struck by a falling block of ice, receiving multiple lacerations and contusions and pain and suffering, yet inexplicably denied compensation by the administrative law judge. David loved the law and judging so much that he managed to render these epic stories not just tolerable but enjoyable.

Somewhat.

Most of the time.

It would be possible to view David as a creature of paradox. By nature calm and quiet, he had a great fondness for big and loud people. A brilliant athlete, he never bored nonathletes with news from the world of cycling or skating. Blessed with a wicked sense of humor, he never deployed it to hurt others. He enjoyed hearing gossip but tended

⁷ 1 *Kings* 3:9. For more on Solomon's good and bad qualities as a judge, see Garrett Epps, *Is Law the Myth Before the Myth Began?*, 4 *SAVANNAH L. REV.* 1 (2017).

not to repeat it; and a secret told to him would never be revealed to anyone. He found the good in everyone, including some people whom others found annoying. His intellect was ferocious, his learning profound, and his eye for shoddy reasoning was acute; but I never saw him make a student or a colleague feel inadequate. He was a beloved teacher to students across the spectrum of ability and belief, generous to all of them and delighted when they succeeded in later life. But his success as a teacher did not breed the excessive ego that transforms many pedagogues into pedants.

I think these were not paradoxes or contradictions, but are in fact the defining characteristics of what the poet W.B. Yeats would have called a “finished man”⁸—a man who had lived the life he chose and found in it the rewards he had dreamed of. His passions were, first and foremost, his family. They meant the world to him, and he enjoyed every minute he spent with them. In fact, on the last evening we spent together, he recounted with enormous pleasure a family expedition to Italy at which every member of the three generations of family managed to find things that he or she enjoyed. That memory is a blessing to me, and I wasn’t even there.

Second to his family came the law. I remember he once said he pitied the students he taught, since they would be swept into the fact-heavy world of practice and lack the luxury that we professors have of simply considering the law for its own sake—what it has been and what it should be. In his life, he had so many wonderful encounters with law—with his clerkship with Justice Linde, his teaching at UO, his work as Deputy Attorney General, as a judge of the Court of Appeals, and finally back at the law school he loved so much and where he was in the last few years a kind of resident tutelary spirit.

He loved biking and the outdoors; he loved food and wine; he was an artist at friendship and good times—and in the three decades I knew him, almost every day provided some measure of all these things. He had the air of a man who had achieved everything he wanted in life and had the wisdom to know it. That was why, I think, he could be as generous with his time and attention as a millionaire can be with wealth. And that was why those around him—myself very much included—were eager to spend time with him and went away from our encounters heartened and refreshed.

⁸ W.B. YEATS, *A Dialogue of Self and Soul*, in *THE COLLECTED POEMS OF W. B. YEATS* 198, 199 (1994).

When I was lucky enough to spend time with David, I never felt that his mind was elsewhere. Each encounter was complete in itself; I never came away regretting a remark or feeling that something had been unsaid. For each of his friends, he offered a special kind of peace.

When the news of his death spread, one of his former students wrote a tribute on Facebook: “Who but Professor Schuman would think to begin a course in Legislative and Administrative Processes with T.S. Eliot?”

I, too, looking back on the three decades of our friendship, was reminded of an Eliot poem, “Burnt Norton” from *Four Quartets*:

At the still point of the turning world. Neither flesh nor fleshless;
Neither from nor towards; at the still point, there the dance is,
But neither arrest nor movement. And do not call it fixity,
Where past and future are gathered. Neither movement from nor
towards,
Neither ascent nor decline. Except for the point, the still point,
There would be no dance, and there is only the dance.⁹

I never saw David Schuman dance—or perhaps I saw him dance every day I was lucky enough to see him. At any rate, now that he is gone, the dance is lessened and the music more measured, the melody unheard far sweeter than what is heard, and I, and the university, and Oregon, and the law, will miss him every day.

⁹ T.S. Eliot, *Burnt Norton*, in *FOUR QUARTETS* 3, 5 (1943).