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In Memory of David J. Bederman (1961-2011)

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David J. Bederman, K. H. Gyr Professor of International Law, died on December 4, 2011, after a seven-year battle with cancer. Emory Law School has lost a true gentleman and a truly gentle man. David was consummately elegant and polite, modest and measured, loyal and faithful, bold and brave. With David there were no empty words or wasted motion, no self-glory or self-pity, no bathos or pathos. Even in the face of the ample adversity he faced in his later years, he was always kind and concerned for others; he was always steady, sure, determined, and fearless.

We have also lost a brilliant scholar, teacher, and advocate. Armed with degrees from Paideia, Princeton, the London School of Economics, the University of Virginia, and The Hague Academy of International Law, David burst onto the Emory Law School scene two decades ago. He had already gained ample momentum from practicing law at Covington & Burling in Washington and at the Iran/United States Claims Tribunal in The Hague. When he got to Emory, he set off on a blistering pace that rapidly won him promotion, tenure, and then a prestigious endowed chair.

David loved to teach, and more than 4000 students over the years flocked to his 15 courses and seminars. He had exquisite gifts at the lectern and as a mentor and faculty advisor to the *Emory International Law Review*. He won both the Ben F. Johnson Faculty Excellence Award from the Law School and the Emory Williams Distinguished Teaching Award from the University. Such was his love of the classroom that he insisted on teaching even through his very last semester, somehow summoning the strength to teach despite enormous pain and growing fragility.

David loved to litigate, which he did brilliantly, especially in admiralty and constitutional law cases, where his work was path-breaking. He was counsel of record in 52 federal cases, and won four cases before the United States Supreme Court -- *Smith* (1993), *Lapides* (2002), *Syngenta* (2002), and *Elahi* (2009). He served as legal counsel to several NGOs and admiralty and salvage companies, and helped win stunningly large damage awards for his clients. Particularly notable was his innovative legal work with Odyssey Marine Exploration Inc., which conducts extensive search and archaeological recovery operations on deep-ocean shipwrecks around the world, including the Titanic. No professor in the history of Emory Law School comes close to his record as an advocate and litigator. He shared these gifts and opportunities with his law students, too, drawing them into his research and brief writing, and establishing the new Supreme Court Advocacy Project at the Law School.

And David loved to write – 12 books and 125 articles all told. In a slow year, he wrote four or five articles, in a good year seven or eight articles along with a new book. His books on international law, admiralty, and international claims are standard sources in classrooms and courtrooms across the country. His monograph on *Classical Canons* is a tour de force in legal reasoning, legal rhetoric, and legal hermeneutics. His trio of Cambridge University Press monographs – *Custom as a Source of Law* (2010), *The Classical Foundations of the American Constitution* (2008), and *International Law in Antiquity* (2001) – have transformed our scholarly understanding of the historical and theoretical foundations of international and constitutional law. His sterling academic reputation also won him coveted editorial seats on various leading law journals, notably the *American Journal of International Law*, the *Journal of Maritime Law and Commerce*, and the *Journal of the History of International Law*.

To honor their distinguished colleague, the faculty at Emory Law School recently established the David J. Bederman Fund with generous contributions from David's family, colleagues, students, and alumni/ae. The Fund will support a distinguished lectureship and student fellowship program; as it grows, the Fund will also eventually support a David J. Berman Professorship in International Law.

On September 26, 2011, David delivered the inaugural David J. Bederman Lecture at the Law School to a standing-room-only audience. He set out the most improbable thesis: that custom – that inchoate, messy, indeterminate gaggle of practices called custom -- is still a vital source of law today, and can trump even American constitutional law at certain points. Before he launched into his argument, he delivered my favorite line in his whole lecture: "Doubt me, and let me convince you." And, of course, by the end, even the greatest skeptics in the audience were nodding.

In many ways, this one choice line – "Doubt me, and let me convince you" -- was a maxim for all of David's life. David did not deal in pride or pretension. He did not push to the front of the line nor ask often for the floor. He rarely showed angst or exertion, pain or exhaustion. He treated everyone as his peer, no matter what their station or vocation in life. It was thus easy to overlook him, to underestimate him, to think him an easy match. That was just how David liked it. Not only was this the becoming modesty of the southern gentleman he was. It was also, conveniently, the brilliant strategy of a man whose mind and pen were his most powerful gifts. The moment he opened his mouth or set pen to paper, those who doubted him soon repented of their folly.

"Young brother Bederman" was my name for David. This was in part because we shared a common intellectual father in the late Harold J. Berman, Emory's first Robert W. Woodruff Professor of Law, who taught both of us a deep love for legal history. It was Berman who had spotted this brilliant young scholar, and persuaded the Emory faculty to hire him. And it was Berman, who, a few years later, persuaded this precocious young professor on the rise to stay at Emory and resist the blandishments of

various prestigious schools that were courting him in earnest. Appropriately, David dedicated his last book to Berman.

I also called him “young brother Bederman” because we shared a natural friendship and easy rapport that is usually reserved for family. David was not the kind of guy to join you for a day of fishing, though he played a mean game of pin-pong and loved golfing and time at the beach with his family. Our friendship was more cerebral and culinary. David loved to sit together with a good glass of wine or over a nice meal, rehearsing a piece of literature, or discussing his favorite Dutchman, Hugo Grotius, or dissecting the latest Supreme Court case. The son of a distinguished geographer, he loved to travel, and to share stories and to trade pictures from the road. A distinguished comparativist, he knew that the best way to learn more about our own law, culture, and beliefs was to see it through the eyes of another culture or civilization wholly different from our own.

We sorely miss this bold and brave young man at Emory Law School. We will honor his memory best if we carry on with the great work that he so ably undertook in his brilliant but brief career, particularly in the fields of international law, admiralty law, and legal history where he made monumental contributions.