Maryland Law Review

Volume 71 | Issue 1 Article 3

Tributes to Professor Robert I. Keller

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Tributes to Professor Robert I. Keller, 71 Md. L. Rev. 1 (2011) $A vailable\ at: http://digitalcommons.law.umaryland.edu/mlr/vol71/iss1/3$

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Maryland Law Review

VOLUME 71 2011 NUMBER 1

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Tributes

TRIBUTES TO PROFESSOR ROBERT I. KELLER

BEING THE BEST IS NOT GOOD ENOUGH

DONALD G. GIFFORD

To the Olympic athlete, winning the gold medal—being the best—is the ultimate goal. This was not the case with my colleague Bob Keller. Throughout the 1990s, I had the opportunity as dean of the law school to read student evaluations of Bob and his colleagues. Many semesters, Bob received the highest evaluations. Students regularly commented that he was the "best" professor from whom they had learned at the law school. Some even suggested that he was the best teacher who had ever taught them. They described him as "challenging" and his enthusiasm for his tax courses as "infectious."

Watching Bob, one would never have guessed that many of his students regarded him as the very best of their teachers. While most of us who teach at the law school use commercially prepared texts, each semester Bob put together a new set of his own materials to teach his advanced tax courses. The previous semester's materials, even if supplemented with the latest opinions in the field, were rarely good enough for him. Further, Bob regularly paced the faculty hall-

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^{*} Edward M. Robertson Research Professor of Law, University of Maryland Francis King Carey School of Law. Professor Gifford served as dean of the law school from 1992 to 1999.

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ways, explaining to his colleagues, "I simply can't figure out how to teach this point. I have to do better than I have in the past." To Bob, it was not enough to be the best teacher; he aspired to be perfect.

During the past three decades, Bob, together with his colleague and friend Dan Goldberg, constituted the "tax department" at the University of Maryland School of Law. Both highly acclaimed teachers, Bob and Dan make interesting professional partners. Ideologically, Bob is a committed liberal, Dan an advocate of the free market. Bob is always cool and unflappable; Dan, a man of firm convictions, is always ready to debate a point. Together, I believe, they offered the best-taught tax curriculum of any law school in the country. Their tax offerings lacked the glossy brochures and the advanced degree offerings of some other law schools, but their students went on to distinguish themselves as judges on the United States Tax Court and as attorneys at large and small law firms, as well as at the Justice Department and Regional Counsel Offices throughout the country. Many credit Bob for their professional success. As I watched contentious congressional leaders bring the country to the brink of default and lose the nation's AAA credit rating last summer, I wondered why they could not work together for the greater good as Bob and Dan have done for more than three decades.

Professor Keller, in his own wise, often reserved, and inevitably careful way, was always a leader of the School of Law community. Bob never promoted grand curricular redesigns, nor did he speak the loudest during faculty debates. He usually led by example. He did, however, volunteer to take on one issue. At other law schools, one of the most serious, recurring problems is the disparity between grades awarded by a professor teaching one section of a course and grades awarded by a professor teaching another section of the same course. Imagine the chaos and contention that ensues when the students of one contracts professor receive an average grade of 3.6 (nearly an A-) while students of another contracts professor receive an average grade of 2.5 (halfway between a C+ and a B-)! Obviously, half those students are very upset, and the disparities make a mess of law journal selection and class rankings. At other schools, situations like this sometimes lead to contentious debates between advocates of grade equity and those who espouse academic freedom. At Maryland, the now famous annual "Keller memorandum" prevents such problems. By compiling all grades and reporting them in course categories, Bob

^{1.} As a faculty member who taught at three law schools before coming to Maryland, I decline to reveal whether this scenario accurately reflects history or is merely hypothetical.

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gently prodded his colleagues to evaluate their students in a manner consistent with institutional norms. Similarly, Bob annually analyzed student evaluations of faculty teaching to provide his colleagues with a better informed context in which to view their own evaluations and, even more importantly, those of colleagues considered for tenure and promotion purposes. Bob also served for many, many years as a careful and thoughtful member of the hard-working Admissions Committee—unknown to his students, his interest in them had begun before they even arrived at the law school. Dave Bogen, one of those onceupon-a-time associate deans forced to call upon faculty members to handle a variety of tasks, calls Bob "a wonderful colleague who was willing to do whatever was asked."

Professor Keller published a dozen or so law review articles on tax policy. In 1982 and again in 1985, the graduate tax faculty of the New York University School of Law, typically regarded as the best graduate tax program in the country, ranked one of his articles as among the outstanding tax articles of the year. Judge Irving L. Goldberg of the United States Court of Appeals for the Fifth Circuit extensively quoted another of Bob's articles in an important opinion. Despite his success as a scholar, it was always clear, to Bob, that students came first. As he once told me, "I still get a charge every time a student comes into my basic tax class gritting her or his teeth, and leaves with thoughts of becoming a tax lawyer."

Somehow "emeritus" and "Bob Keller," a colleague who remains "forever young," do not fit comfortably together. However, that time has come. The law school community will sorely miss Bob's day-to-day presence, but what will remain is the example he set as a teacher who strove for perfection and as a colleague committed to fairness, collegiality, and achieving great things working in partnership with others whose views sometimes differed from his own.

The Taxation of Barter Transactions, 67 MINN. L. REV. 441 (1982); The Tax Effect of a Shareholder's Post-Incorporation Sale of Stock: A Reappraisal, 2 TAX L.J. 89 (1985).

^{3.} The Tax Consequences of Interest-Free Loans from Corporations to Shareholders and from Employers to Employees, 19 B.C. L. REV. 231 (1978).

^{4.} Martin v. Comm'r of Internal Revenue, 649 F.2d 1133 (5th Cir. 1981).

^{5.} Bob Dylan, *Forever Young on PLANET WAVES* (Asylum Records 1974) ("May your hands always be busy.... May you have a strong foundation.... May your heart always be joyful.... May you stay forever young.").

A FIRST-CLASS SCHOLAR AND TEACHER

DANIEL S. GOLDBERG*

It is my pleasure and high privilege to write this short tribute about the accomplishments of our colleague, Robert Keller, aka Bob, who is retiring this year. He is a scholar, teacher, and military hero.

Let me start with Bob's military career, which of course was before he came to the law school. He was a proud and distinguished member of the Philadelphia Army Reserve Unit during the Vietnam War. I know that I felt safe as a college student during those years knowing that we had reserves at home dissuading our enemies from invading the country, but I did not know at the time that Bob's presence in the military was the reason. Bob subsequently went on to become a vegetarian.

Bob's legal career began many years ago when he became a tax associate at the highly respected Philadelphia law firm of Wolf, Block, Schorr & Solis-Cohen. He left there to join the University of Maryland School of Law faculty in 1972. Some years subsequent to his leaving, Wolf, Block suffered serious financial reverses, was thereafter resurrected, but recently went defunct. If past is prologue, watch out Maryland Law! Will the \$30 million be enough to save us?

I met Bob in 1977 when I was interviewing for the tax job left vacant by former Dean Cunningham's death. Bob and the former dean both taught sections of income tax. Bob used the 1954 Internal Revenue Code; Dean Cunningham used the 1939 Code, or so I heard from colleagues. I was given my choice because of the long tradition at Maryland of academic freedom, which I found quite impressive, though a bit odd in its application.

I found Bob's more modern approach to tax law was similar to my own approach. And so, in the fall of 1978, I began my experience at Maryland as the junior tax professor—and had not moved beyond that status in the last 33 years, being the oldest junior tax professor in the country—but not anymore.

Bob built a well-earned reputation as a first-class teacher and scholar, and, as a beginning teacher, I learned a lot from him in both

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^{*} Professor of Law, University of Maryland Francis King Carey School of Law.

regards. Most importantly, Bob understood, and understands, that teaching is where you make your real impact. Bob believes that tax theory is the context in which the Internal Revenue Code and case law should be understood and that teaching tax is best accomplished by stressing in class the theoretical thread that holds the subject together. Add to that basic philosophy mastery of the subject, careful preparation, connecting with students while he is teaching, and trying to do the best job he possibly can each and every class, and one can capture what has made Bob a truly great teacher over his thirty-nine years at Maryland. Bob and I have essentially populated the Maryland tax bar, convincing a large number of students through teaching and guidance that their future was tax—and thereby ruining their lives.

Bob also has been a first-class scholar. Bob did his first major scholarly work developing, explaining, and applying his theory of taxation, which came to be known as "two-payment analysis." Twopayment analysis essentially breaks a transaction that appears to be a single transaction into its component parts in order to analyze its tax consequences. Bob wrote an important, well-received, and influential article applying that theory to interest-free loans, which was published in 1978 under the title The Tax Consequences of Interest-Free Loans from Corporations to Shareholders and from Employers to Employees. This article explained that an interest-free loan is really an interest-bearing loan followed by a transfer of the interest by the lender back to the borrower, the tax consequences of which depend upon the reason for making the loan interest-free. That article received great play in the academic world, in fact such great play that Bob wrote it again in 1981 and titled it, The Tax Treatment of Interest-Free Loans: A Two-Transaction Approach.² Those articles eventually led to federal tax legislation mandating the two-transaction result by statute.

Having developed a fixation for this theory (and the old-timers out there will remember this fixation), Bob rewrote that article a year later by applying two-payment transaction theory to barter transactions in an article titled *The Taxation of Barter Transactions*.³ And then another version of the article in 1988 titled *Revamping the Tax Treatment of Stock Redemptions*: [you guessed it] *A Two-Transaction Approach*.⁴

He did not, however, publish the follow-on article on which he worked, which would have been titled, *Ordering a Two Course Meal: A Two-Transaction Approach.* Nevertheless, there is a lesson here: If you

^{1. 19} B.C. L. REV. 231 (1978).

^{2. 1} VA. TAX REV. 241 (1981).

^{3. 67} MINN. L. REV. 441 (1982).

^{4. 20} Ariz. St. L.J. 989 (1988).

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discover a good idea, go with it and keep going with it, because a second good idea is often very hard to come by.

Bob has certain personality traits that make Bob, Bob: First, he is idiosyncratic. Bob's teaching stems from his belief in the importance of using essential guiding threads that he believes with complete certainty to be essential in understanding the underpinnings of the income tax. The certainty persists from year to year, but what he deems essential changes from year to year. This explains why Bob has to use his own teaching materials rather than a published course book. The lesson here is that it does not matter what issue you choose as a lens through which to teach your subject as long as the lens brings the subject into focus and you teach it with certainty and enthusiasm.

Second, he has an odd sort of decisiveness. Everyone who knows Bob knows that he is a decisive person. Once he makes up his mind on the right thing to do or the best approach, he sticks with it steadfastly—for about half an hour. Then comes the period of endless rethinking.

Let me give an example. We used to teach a course at the law school called Corporate Tax I, the follow-up course to Income Tax. We no longer teach a course by this name. Rather, we have taught Introduction to Corporate Taxation, Business Taxation, Introduction to Business Taxation, and Corporate Tax—again. The constancy in the offering, however, was the material covered, which did not change. The other constancy was that the name of the course was bound to change the following year. The associate deans knew to write Bob's course names in pencil.

Bob was a mentor to me in my early years at Maryland, although just a few years senior to me, and has been a valuable colleague to me after those beginning years (and I expect will continue to be in his emeritus status). He has read numerous drafts of my articles and book chapters and has provided me invaluable comments and suggestions, thereby improving my work on the way to publication. We have spent endless hours talking tax theory and policy as two tax junkies and tax soulmates.

Bob has also served as a filter for me within the law school. I show him drafts of my angry memos to the various deans and he censors them with such helpful thoughts as "Do you really want to say that?" or "You can't say that!"

Bob's retirement leaves a gaping hole in the faculty and the tax program at the law school. He is truly irreplaceable—so the law school has not tried to replace him. Bob represents to many of our junior faculty a member of the "old guard," who are now trading their

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classrooms at the law school for assisted-living rooms. With his retirement, we lose not only Bob's immense subject matter knowledge, so vital to the education of future business lawyers and tax lawyers in the State of Maryland, but also a professor who embodies a commitment to teaching excellence as the single highest priority of a law professor. Bob will be missed by students, faculty, and staff alike, but most of all by me.

INSPIRED TO STUDY TAX LAW

RICHARD E. LEVINE*

Robert I. Keller was born in Brooklyn, New York.¹ He graduated from the Wharton School at University of Pennsylvania in 1963. He was one of the top five graduates in the Wharton School that year. He then went to Harvard Law School where he graduated in the top ten percent of his class in 1966. After law school, Bob joined the prestigious Philadelphia law firm of Wolf, Block, Schorr & Solis-Cohen.² While at Wolf, Block, Bob was exposed to many heavy hitters in the tax community.³ Bob's years in private practice at this top-notch firm gave him a practical perspective that proved useful as a tax professor.

Fortunately for the University of Maryland School of Law and his students, Bob became a professor of tax law starting in 1972. Bob was really the first full-time tax professor at the law school.⁴ I encountered Bob when I was a second-year student in the spring of 1974, his second year of teaching.

Several words come to mind when I think of Bob—enthusiastic, smart, charismatic, inspirational, approachable, intelligent, entertaining, fun, and intellectually curious. Once I took my first course from Bob, I couldn't get enough. It was such a pleasure being a student in

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^{*} J.D. 1975, University of Maryland School of Law; LL.M. (Tax) 1978, Georgetown University Law Center; Partner, DLA Piper LLP (U.S.); Member of the American College of Tax Counsel.

^{1.} Or, as Bob would say to show he wasn't a middle class shlep, "Brookline, New York."

^{2.} It wasn't Bob's fault that Wolf, Block dissolved a few years ago.

^{3.} Such as Jerry Kurtz (who became the commissioner of the IRS) and Bernie Wolfman.

^{4.} Dean William Cunningham taught basic income tax, but Bob taught the sophisticated courses. And this was before Dan Goldberg joined the faculty.

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his class. He inspired me, as well as others, to focus on tax law. During my career as a tax lawyer, I often think back to the start that Bob gave me and the wonderful foundation that he provided me.

It was always a pleasure to be a student in one of Bob's classes. Many other students felt and still feel the same way as I do. Bob's enthusiasm for the tax law and his love of teaching came through in every class he taught. Over the course of the last thirty-nine years, Bob's students have been fortunate to have been exposed to such a wonderful professor as Bob, who challenges his students, is interested in the topic, and is always looking to expand and learn more about the subject area and present it in a way that the students will find interesting. Several students have said, "Bob is the best professor I've ever had at the School of Law." I can't disagree.

Bob could have used, over and over again, his class notes from thirty-nine years ago in the classes he taught. Instead, Bob would always be thinking of ways to refresh the topic, to keep it interesting for his students. His recent creation, "Tax and Financial Planning for Individuals," is an example of Bob's intellectual curiosity.

After I graduated from the law school, I would frequently call Bob to get his thoughts on a tricky tax issue I was encountering. He would always take my call. We've stayed in touch, and I am proud to have a photograph of Bob and me in my office, as I think back to the wonderful professor I had over thirty-five years ago who pointed me in the direction of tax law that I have embraced over the years as well. I am so fortunate to have been a student of Bob when he was a rookie professor.

Bob will now take home the Internal Revenue Code, the Treasury Regulations, the treatises, and the private letter rulings, and explain the intricacies of tax law to his wife, ⁵ his children, ⁶ and his six grandchildren. ⁷ My guess is that he will inspire them in the same fashion as he inspired me. ⁸

I know that all of Bob's students join me in thanking him for all he has given us, all of his energy and enthusiasm, all of the knowledge he has imparted to us, and the foundation in tax law he has provided us.

^{5.} Bob and his wife Linda have been married for forty-four years as of this writing.

^{6.} Katherine Whelan and Melanie Snyder.

^{7.} Mathew, Kayla, Krista, Benjamin, Zachary, and Nicholas.

^{8.} Daughter Melanie Snyder continues in the "family business." She teaches law at Stevenson University.

THE HUMANITY OF A LAW SCHOOL

MICHAEL KELLY*

Bob Keller joined the faculty at about the same time as I did, around 1972, and unlike me, he stuck around. There was an initial kerfuffle in his early years when an article he wrote in the *Maryland Law Review* advocating graduated rates for state income taxes¹ led some members of the esteemed Maryland Bar to cancel their subscriptions to the *Review* to protest the publication of the work of the newly hired "socialist professor." Bob successfully moved beyond this contretemps and to this day remains a "socialist professor," which in the current political climate of this country means he believes people should pay taxes.

There is some question whether deans ever dream. Fighting fires, appearing aggrieved faculty or students, and dealing with higher levels of university administration tend to shrivel up dreams—but if deans ever dream, they dream of someone like Bob Keller.

One of the particular joys of my being dean at Maryland in the olden, probably-not-so-golden days was that, with people like Bob Keller, major changes made at the law school were rarely contentious. Bob is supportive, thoughtful, progressive, considerate, and superb at what he does. I can only speak as his dean: in my book he is the poster child of the perfect faculty member. Bob is a spectacularly good teacher, a tax teacher who—counter to stereotype—exudes mercy and kindness and makes palatable and understandable a subject so inherently *un*merciful and *un*kind.

When I say spectacularly good teacher, I mean someone who consistently, year after year, starting when he first joined the Maryland faculty, rates at the very top of student rankings of teaching quality. A very little research on my part dug up student comments like "the best professor I have had at law school . . . made what I thought would be a boring class really interesting;" "The most effective prof I've had in 3 years of school;" "Awesome. Greatest professor I have

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^{*}Former professor and dean of the University of Maryland School of Law and University Vice President and Chief Operating Officer of Georgetown University.

^{1.} Robert Keller, *The Case for Highly Graduated Rates in State Income Taxes*, 35 MD. L. REV. 617 (1976).

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EVER had.... [He] challenged me more than any professor to date;" "[He] was always talking about the direction that the tax system might go, different theories, etc... very interesting and he prodded us to think."

So what is Bob Keller's secret? To start with, he is one smart hombre, who graduated very high in his class at Harvard Law School and did even better in his undergraduate studies at the Wharton School of the University of Pennsylvania. He is a solid scholar in his subject, who published a dozen law review articles in good journals, some of which were cited as among the outstanding tax articles of the year by the New York University Law School graduate tax faculty. He even stimulated an (obviously mistaken) rebuttal article written in response to his work on taxing barter transactions. He enjoys numerous citations to his work in judicial opinions and tax treatises.

Students recognize his intelligence, and they appreciate his commitment to clarifying a subject that requires a hell of a lot of clarification. He doesn't use a standard text book, but is revered for his preparation of problem sets and other materials designed to help students work through problems and understand the issues.

Bob's not-so-secret weapon is that he is the genuine article, a magnificent human being who fuses analytical ability, an obvious love of teaching, a sunny disposition, gentleness, and kindness to others into that rarest of alchemies of a great teacher who makes a difference in the lives of his students. Again let me cite the bible (student evaluations) on Bob Keller to illustrate my point:

- "Wonderful class, wonderful person."
- "Totally approachable, super prepared for each class."
- "The nicest and most approachable law school professor."
- "If Professor Keller were asked to speak extemporaneously on some tax topic, he would . . . speak with sheer joy, enthusiasm, and love! It is obvious . . . [he] is passionate about tax, and even more passionate about helping students learn."

If there is one unwritten rule about old deans who, like "old soldiers, never die; they just fade away," it is never, ever, give public advice to a successor. But I can't resist passing on one student's comments about how genuine, how unpretentious Bob Keller is—not characteristics (I can say with some understatement) the student ap-

^{2.} Gen. Douglas MacArthur, Address to Congress (Apr. 19, 1951).

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plied universally to the Maryland faculty. The student continued with a piece of unsolicited advice: "I know he is 'semi-retiring,' and believe me, if he completely retires, it will be very difficult to find a professor who is even one-half as brilliant, kind hearted, and knowledgeable about tax law." And the student ended with a strong piece of advice: "Please DO NOT LET PROFESSOR KELLER RETIRE COMPLETELY!!!" (festooned with three exclamation points!!!).

With that parting word of advice, let me simply say it is an honor to pay tribute to this man, a beloved teacher and beloved colleague, who has given so generously to strengthen the reputation, the quality, and the humanity of this fine law school.