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## Tributes

### TRIBUTES TO PROFESSOR DAVID BOGEN

KAREN H. ROTHENBERG\*

David Bogen has dedicated himself to education and scholarship at the School of Law for thirty-seven years. When he joined the faculty in the late 1960s, Professor Bogen's erudition and good nature quickly earned him the respect and affection of his students and fellow faculty. I am proud to have worked with him for the last twenty-four years. He has established a legacy of both warm collegiality and scholarly excellence and will remain a vital part of the law school community in the coming years.

Professor Bogen graduated from Harvard College in 1962, earned his LLB there in 1965, and earned an LLM from New York University in 1967. He joined the faculty of the University of Maryland School of Law in 1969. He has been the T. Carroll Brown Scholar since 1993, and he is the author of two books, *Bulwark of Liberty: The Court and the First Amendment*<sup>1</sup> and *Privileges and Immunities: A Reference Guide to the United States Constitution*,<sup>2</sup> as well as many other works.

Several of these other works include law review articles. During his long tenure at the School of Law, Professor Bogen has written numerous pieces for the *Maryland Law Review*, dating back to 1970. That first article, about the civil rights implications of a U.S. Supreme Court

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\* Dean and Marjorie Cook Professor of Law, University of Maryland School of Law.

1. DAVID S. BOGEN, *BULWARK OF LIBERTY: THE COURT AND THE FIRST AMENDMENT* (1984).

2. DAVID SKILLEN BOGEN, *PRIVILEGES AND IMMUNITIES: A REFERENCE GUIDE TO THE UNITED STATES CONSTITUTION* (2003).

decision construing a testamentary trust, set the tone for much of the scholarship he would produce over the next three-and-a-half decades. He has been an articulate exponent for civil rights and a devoted authority on constitutional law and legal history.

Of special interest to Professor Bogen has been the intersection of race and law in Maryland. He has written extensively on the integration of the Maryland Bar and the larger struggle for equal rights in the State following the Civil War. That writing contains a large amount of valuable original research.

Professor Bogen has taught a wide range of courses over the years. Some have been core parts of the law school curriculum, like contracts and constitutional law. Others have focused on more specialized subject matter, like Law and Indigenous Peoples, a course Professor Bogen developed as an outgrowth of his interest in constitutional law and civil rights. No matter what the subject matter, his students have enjoyed his classes as much for the Professor's legal acumen as for his famously mismatched collection of neckties!

Professor Bogen's dedication to the School of Law has also extended well beyond the classroom. He volunteered to serve as Associate Dean for Academic Affairs for two separate terms, from 1992 to 1994 and again from 1997 to 1999. Some faculty might believe that the position is not among the law school's most glamorous or rewarding, but Professor Bogen took it on willingly and without complaint. He even excelled in the job to such an extent that in subsequent years it had to be divided among two full-time faculty members. But then that is Professor Bogen all over—committing himself to his work and vastly exceeding expectations.

Regardless of what courses he taught or what positions he held, Professor Bogen has left an enduring impression on everyone he worked with at the School of Law. I salute his years of dedicated service to our community, which he will continue to be a part of as a Professor Emeritus. Professor Bogen, well done!

DAVE BOGEN: THE GLUE

WILLIAM L. REYNOLDS\*

Dave Bogen has finally retired. For a third of a century, he has been my friend and mentor. For a slightly longer period, he has been

an outstanding scholar and dedicated teacher, and he has given great service to this Law School.

Friendship comes first. It is trite to talk about “through thick and thin” but the cliché certainly holds with Dave. It does not matter whether you want to talk law, the Os,<sup>3</sup> or local politics; Dave is always there. When times are tough, he provides a non-judgmental shoulder; when you are only interested in playing squash or reminiscing, he is there as well, as any of that *rara avis*, a true friend, should be.

Dave has always been a mentor, a role model in every way. He taught me how a professor *should* act in every situation. Sometimes his teaching was more concrete. For example, the first time I taught Constitutional Law (a very difficult course), I quickly developed the habit of dropping into Dave’s office for fifteen minutes to pick his mind before I went off to class. Boy, did I learn a lot, and I am sure my class appreciated every moment I spent sitting at Dave’s feet.

Someone meeting Dave Bogen for the first time today would surely note his affability and his incredible niceness. (The stranger would also note Dave’s sometimes idiosyncratic attire, especially his snazzy Australian sheep farmer outerwear and his amazing tie selection.<sup>4</sup>) What the stranger would not likely notice on first impression was that she had just encountered one of the finest legal minds around. Although Dave does not push his intellect on others (as some have been known to do), he is a prolific and exacting scholar. He is a leading authority on both the First Amendment and the Privileges and Immunities Clause of Article IV. He was the first and, I believe, only, scholar to understand *Flast v. Cohen*.<sup>5</sup>

Dave’s most significant scholarship, however, has been his remarkable effort for more than two decades to shed light on the intersection of law and race in Maryland. His subjects here have been many, including articles on the first black resident in this State, the first black lawyers in Maryland, and the history of efforts to end segregation here after the Civil War through litigation. This scholarship is excellent. It contains original research of the highest order with first-rate analysis of the law and surrounding social problems. And it illuminates areas that no one else has looked at.

Two traits really set Dave’s scholarship apart. The first is his relentless pursuit of truth, a real scholar’s desire to examine all trails,

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3. The team calls itself the “O’s,” but, of course, that is not grammatically correct.

4. A confession: During the 1970s, the students gave an award to the professor who wore the worst ties. Dave routinely won that award from me. I remain jealous.

5. 392 U.S. 83 (1968) (holding that taxpayers had standing to challenge spending under the Establishment Clause of the First Amendment).

before choosing the one to follow. He is very tenacious in this search, unwilling to stop until he is sure that he understands completely all sides of the problem.<sup>6</sup> The second trait is his deep interest in everything he encounters along the way (especially if it involves history). Thus, his work on the history of civil rights litigation in Maryland led him to cases involving attempts to desegregate steamboats, which, in turn, led him to investigate late nineteenth-century steamboats, their routes, and their operations. His enthusiasm for such off-the-track knowledge is boundless; he has even joined organizations devoted to historic steamships.

Others have written about Dave's outstanding contributions to the smooth running of this School (long one of the very best-administered law schools in the country). His skills as an administrator were many; among them organization, common sense, and the willingness to work very hard. Surely the most important, however, was his sense of fairness; no one who has ever worked with Dave has ever doubted that he worked always for the common good. That sense of fairness permeated everything that he did.

For more than three decades, the University of Maryland School of Law has been blessed with a remarkable cadre of faculty whose service and loyalty have helped make the School what it is. Now they are leaving us. Among the recently retired, Abe Dash, Alan Hornstein, and Ted Tomlinson have provided leadership of the highest quality. They have been sorely missed.

And now Dave Bogen has retired. I always thought of Dave as the "glue" that held the Law School together; I am sure that he has left enough glue so that we can prosper in his absence. But I—and the School—will miss him dearly.

#### DAVE DROVE ME CRAZY, AND I AM GLAD HE DID

MARK A. SARGENT\*

Dave Bogen always drove me crazy. I worked with Dave often during my time on the faculty at the University of Maryland School of Law, first while he was Associate Dean and I was an impetuous newbie,

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6. Tenacity also describes Dave's athletic career. He is certainly the most tenacious (and under-sized) rebounder I have played with—sort of a faculty version of Wes Unseld. I called him "Elbows" and did not get too close to him when he went up for a board. Copyright © 2006 by Mark A. Sargent.

\* Dean and Professor of Law, Villanova University School of Law. Piper & Marbury Professor of Law (1989–97) and Associate Dean for Academic Affairs (1994–97), University of Maryland School of Law.

and then when I became Associate Dean and he became an *éminence grise*. I came to him often for advice during both periods, although sometimes the prospect of talking to him made me grit my teeth. I gritted my teeth because I knew that going to Dave was going to be good for me, but that he would never tell me what he knew I wanted to hear. It was particularly difficult going to Dave when I was really angry and full of indignation, and looking for reassurance, validation, or just fuel for the fire. Nope, none of that from Dave. In fact, I never saw him angry or even upset. He also had this infuriating habit of seeing the saving grace in even the worst actors, and in understanding the other's point of view, even when he disagreed with it. He would never say anything malicious or mean-spirited about anyone, even when they deeply deserved it. Bringing a head of steam into his office was always a waste of time. Worse, I always ended up feeling slightly embarrassed over having generated all that heat.

Dave could drive me crazy even in cooler moments. He was unfailingly deliberate, intelligently critical, and patient, especially when I was ready to run into a wall with some half-baked scheme that I thought would heroically transform legal education. In retrospect he was usually right, of course, but that could be hard to take at the time. In my more Machiavellian moments, Dave would leave me shame-faced by just assuming that we would do the right thing as a matter of course. In short, in my experience David Bogen always acted with perfect integrity, with his actions never contradicting his professed values. Just try working with someone like that! He will drive you crazy too.

I should confess, however, that I am glad Dave drove me crazy. Of course, Dave did not really drive me crazy. He taught me things I needed to know. He showed me how one earns the trust of one's colleagues by being a person of integrity, who can be counted on to act in a way consistent with the institution's shared values and not a personal agenda. He showed me how to be both more critical of myself and less critical of others, and that the capacity to understand and forgive is essential to the capacity to judge. He taught me that energy and determination are only part of what a leader needs, and that generosity and delicacy are essential to leading fragile human communities. I don't think I could have been a success in my work as dean at Villanova Law School without all I learned from David Bogen, and when I fail, it is often because I have forgotten those lessons.

In many ways, Dave embodies the virtues that are in short supply in the hothouse of the academic world: humility, honesty, altruism, and devotion to learning rather than careerism. I think we all sensed that about Dave. He was the person to whom so many colleagues felt

safe in going when they were burdened by their careers or something in their personal lives. It is thus not surprising that he was asked to serve as Associate Dean for Academic Affairs twice—the most difficult and thankless job in legal education—despite his desire to concentrate on his many teaching and scholarship interests. He took on that responsibility not because he particularly enjoyed it or because he wanted power or influence, but because he felt an obligation to serve. Fortunately for Maryland, he decided to serve during two periods of transition in which his experience and positive presence provided much-needed stability. His contributions during those periods will not be forgotten by those who understood everything that he did.

As soon as I heard that Dave had decided to retire, and that we needed someone to teach a section of Constitutional Law at Villanova in the Fall of 2006, I asked Dave to serve as the Reuschlein Distinguished Visiting Professor of Law, and he was kind enough to accept. Just the thought of his calm presence on our faculty floor brought back the old feeling of reassurance that I remembered so well from my days at Maryland. So I stop by his office once in awhile to hash things over, and before I know it, he's (almost) driving me crazy again. And I am glad he is.

GORDON G. YOUNG\*

The first time I laid eyes on Dave Bogen was in 1979, just before I joined the Law School as a visiting professor. I was looking at pictures of prospective colleagues in the catalogue, wondering about them somewhat apprehensively. I recall thinking that Dave looked like a riverboat gambler. This impression has proved not entirely misleading. Dave wears wide-brimmed hats and has many tricks up his sleeve, a love of life's nearly endless possibilities and of taking at least occasional chances. However he completely lacks a professional gambler's exploitive impulses, except of course in sports. In that setting, and only there, he is, I am afraid, dangerously heartless, a man with a deringer in his vest pocket. I remember losing almost respectably to Dave's left hand in squash, happily ignorant that Dave is right-handed, until Garrett Power set me straight.

Sports aside, David is perhaps the most selfless person with whom I have spent time. If it were an important task, such as a dean search, an appointments decision, or a promotions matter, every one of his colleagues wanted the benefit of Dave's judgment and more. The

more was that we wanted him involved centrally in making the decision. We wanted him on the committee and in the chair. This, it would seem, was our boon, his bane, though he never remotely suggested the latter. Perhaps to him it really was a pleasure. He was, and he remains, willing to do nearly anything for the Law School or his friends, whether trivial or important, easy to do or long and exhausting.

The help that Dave gives colleagues in connection with teaching or scholarship exemplifies his altruism. He will read or listen to anything, however long, however often. For him, discussions have always been about the ideas, not about keeping score—not about whose ideas they were. However, I must say that often I have found myself realizing, long after conversations with Dave, that the interesting ideas were his. There are so many ways to be admirable in this business. Dave's involves as little self-promotion as is consistent with being a card-carrying law professor.

He was part of a group of colleagues who just preceded me in coming to the Law School and whose scholarly productivity was impressive, both in amount and quality. This body of work is all the more impressive because, at the time, there were no real publication requirements for tenure or promotion. The compulsion to write almost always came from the inside. As for Dave's portion of this scholarship, it was brilliant, though like Dave, never flashy, his smile to the contrary notwithstanding.

Dave is one of the most powerful legal process thinkers whom I have known personally. One of his pieces in particular, on the state action doctrine, is of astonishing quality. His early-career articles on the First Amendment are so foundational in their niche that they continue to appear prominently in the First Amendment books that I use in class or consult. Often, I have a daydream sent from hell, in which a First Amendment student of mine asks why Dave is not teaching our class. When this thought occurs in class, I shake it off, always telling the students that the author of the pieces cited is my colleague and my friend. I say that he and his articles are wonderful and that they should get to know him while they are here. When they do, they tell me that they are especially pleased not to have missed the chance. More recently, Dave has written impressively beyond the First Amendment, on race and on the now formerly baffling (at least to me) fraternal twin Privileges and Immunities Clauses. And at an age when many people are telling the same stories of *X v. Y* for the *n*th time, Dave is teaching himself and students the complex and sprawling comparative law regarding aboriginal peoples.

It is not easy to get Dave to talk about himself. But, over the years as one gets to know him, Dave's loves of his family, his wife's fine art, jazz, baseball, Australia, Spain, so many people, places, and things—all emerge. One night, a year or so ago, we were together at Camden Yards, on his tickets. He slipped up and I was able to get Dave to talk about Dave. He spoke about his especially happy time at Harvard College, his complete absorption in courses, his classmates, club football, and all of college life. The outfield grass became Harvard Yard: it was as if I was living his blazoned days myself.

On occasion, I find myself thinking of David as somewhat Shakespearean in his broad understanding of the way the world works and in his gentle, wise benevolence. The sometimes insecure and sad man in Sonnet 29 bemoans his inner poverty, his reduction to “[d]esiring this man's art, and that man's scope.” This happens to all of us from time to time. For me, when it happens, it is often Dave whose scope and art and diplomacy and kindness I think about with admiration.

In some sense, Dave Bogen will be at the Law School for many years to come. I hope this will very often include his physical presence, his riverboat smile under wide brim, and not just his very fortunately inescapable influence.

#### DAVID BOGEN IS A MAGICIAN

BEVERLY CARTER\*

His magical power first came to light when he connected me to the law school experience. I was old when I entered law school. I commuted from Silver Spring every morning. After spending the day in the pursuit of knowledge, I rushed home to transport my children to their various activities, cooked dinner, oversaw the completion of their homework, and put them to bed. It was only after all of those activities were done that I was able to sit down and devote whatever brain cells were left to completing my own assignments that were due the next day. Living this daily hectic schedule left no time for me to enjoy the pursuit of knowledge or the activities and social interaction enjoyed by the other students. I felt left out.

Knowing that I did not have a great deal of time to devote to my studies, I decided to sit in the front row in my classes to make sure that I had the least distraction and to get the most out of the presentation

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\* Court Administrator for the Circuit Court for Baltimore City. J.D., University of Maryland School of Law, 1983.

as possible. Most classes were pretty straightforward and uneventful. They spoke, we answered. We were enlightened.

Things changed when I took Professor Bogen's class. I again sat in the first row. This time I had an added incentive, he was cute and easy to look at. The most dramatic difference was his presentation. He talked about the subjects of his discussions as if he knew them and had interacted with them. He talked about events and situations as if he had lived them. He appeared to be personally involved with the subject matter. I did not have any idea what he was talking about, but I certainly admired his passion. It was that passion that made me want to learn more. It was then that I began to feel connected and decided to become more interactive and prepared.

In my third year, I was given the opportunity to work as the research assistant to Professor Bogen. At that time, he was doing research on the three African-American students who had been attending the University of Maryland School of Law in the late 1890s and who had not returned to finish their studies. He was on a mission to discover why they had not returned and what happened to them. He wanted to know everything about them. I was given the charge to find the answers.

During the process of researching the subject matter, Professor Bogen and I met several times a week to discuss what was found and what still needed to be investigated. We were discouraged about our dead ends and elated about "aha" moments. Each meeting was filled with his passion. His passion energized me to do more.

I will never forget the day when we found out why the African-American students did not return to the Law School. Professor Bogen had instructed me to make a visit to the daughter of one of the students. After spending a long afternoon reminiscing with the daughter about the life and accomplishments of her illustrious father, she finally told me why he had not returned to the Law School. She said, "they were kicked out." I somehow felt cheated that the answer was so simple but I was glad to have finally found an answer.

I raced back to tell Professor Bogen what I had found out. He was very happy to hear the news but immediately set out to find out the why and the how of what happened. Resting on our laurels was not an option.

Each new research discovery sent him on a new tangent and a new path. I wondered whether we would ever finish the research we started. He did finally reach a conclusion with which he was satisfied. The research was completed, the article was written and a friendship was born. Professor Bogen became David Bogen.

His next feat of magic came when he connected me to his family. Throughout my term as research assistant, we talked about matters other than the research. We had children who were close in age. Many of our conversations revolved around what they were doing, why they were doing it, and how much it was going to cost us. We also talked about current events, politics, and other problems of the world. The friendship that we developed spread to our families.

Our families took several excursions together. The most memorable trip was to the Apple Butter Festival in Berkley Springs, West Virginia. At first, the mere thought of taking my thoroughly entrenched urban children to a rural apple butter festival seemed out of the question. They did not even know what apple butter was. Again, David worked his magic and persuaded us to go. We walked around the festival, we bought a few local craft items, we watched them make apple butter, and we ate ice cream. David also took the opportunity to give us a little history lesson. To our surprise, we all had a good time. Our friendship continues to grow.

An old Zulu proverb states, "Magic takes time." Throughout my days at the Law School, David Bogen worked his magic to inspire me to participate in and enjoy the law school experience, and to peak my interest. He continues to make magic happen by being my friend.