

## In Praise of Bill Reynolds and Paul Blair

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# Tribute to Professor William L. Reynolds

## IN PRAISE OF BILL REYNOLDS AND PAUL BLAIR

WILLIAM M. RICHMAN\*

I first met Bill (at the time “Professor Reynolds” to me) in his second year of teaching as one of sixty first-year law students enrolled in his Contracts I course. His classroom style was Socratic, but much kinder and more compassionate than the fictional Kingsfield. The theory behind that method is that it encourages students to prepare and that it teaches them not just the subject matter but also how to “think like lawyers.” Its drawbacks, of course, are that it is terribly inefficient from the point of view of subject matter coverage. It also can be terribly intimidating to students. It is a very delicate balance and it requires an expert practitioner. I tried it for my first few years of teaching, but gave it up in favor of a hybrid lecture style. The balance that Bill struck so elegantly eluded me; I just could not simultaneously achieve the goals of course coverage, methodological training and gentle prodding that Bill managed for forty years in eighteen courses. All the while he earned the respect and affection of his students, as shown by his consistently excellent teaching evaluations and nominations for “professor of the year.”

In my third year, I took Bill’s courses in anti-trust and legal process. It was the second of these that made so great an impression on me and also turned out to be the basis of a forty-year writing collaboration. Bill used a set of materials by Henry M. Hart and Albert Sachs, which covered the perennial problems of precedent, statutory interpretation, and judicial honesty (opinion writing, not bribe-taking). Hart and Sachs were part of the “Legal Process” school of Jurisprudence, which arose in reaction to the skepticism

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of American Legal Realism and Marxist jurisprudence. The central tenet of the Legal Process School was that law *was not* just politics, that while honest respectable judges were free to come to different conclusions on different issues, cases and facts, they were not free to substitute their own political views for the “Law.” While legal rules did not bind the judges like a straight-jacket, there were “craft ways” that restricted the judges in a more subtle fashion, principles and policies, to quote Ronald Dworkin, that kept judges honest, and, furthermore, that there were “right answers” even to the most political of questions (remember all of this took place years before the election of 2000).

Bill was passionate about these matters, and infected me with some of that passion. A year later, while serving as a law clerk to Judge Joseph H. Young (a job Bill’s recommendation surely helped me to secure), I encountered a Fourth Circuit opinion that announced *ex cathedra* that the court would no longer be bound by its unpublished opinions.<sup>1</sup> It seemed to call into question all the subtler restraints that kept the judges from decision by whim. I called Bill, and we spoke about it, but there were more pressing matters to attend to.

A few months later I accepted a job as an assistant professor at the University of Toledo College of Law (Bill’s enthusiastic endorsement helped again) and faced the developing norm “Publish or Perish.” I had not a clue what such an inexperienced and untried person could possibly add to the vast amount of legal literature. I began looking more closely at the problem of unpublished opinions, amassing a mountain of research material, but again was blissfully ignorant about how to use them to construct a law review article. I called Bill; we talked about legal process and the unilateral decision of the judges to cast off one of the only true constraints on their discretion. We talked some more and shared more indignation. After a few conversations Bill made me an incredibly generous offer. We could co-author an article critiquing the practice. This was a godsend for me. Of course Bill brought to the table his formidable intellect and his experience in writing for a professional audience, but, far and away, Bill brought what I lacked most: the *confidence* that we had something to say. That was his greatest gift to me, and it is no exaggeration to say that it made my career.

Back to 1976, we wrote the article and had the incredible good fortune to place it in one of the nation’s most respected law reviews.<sup>2</sup> Now Bill is a man of sound common sense. If the topic was hot, we had to ride that pony until it died. So we did for more than thirty-five years. And, to quote Rick

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1. Jones v. Superintendent, 465 F.2d 1091 (4th Cir. 1972).

2. William L. Reynolds & William M. Richman, *The Non-Precedential Precedent—Limited Publication and No-Citation Rules in the United States Courts of Appeals*, 78 COLUM. L. REV. 1167 (1978).

in *Casablanca*, so began a beautiful friendship and a very unusual forty-year partnership.

After the initial success, we broadened our focus and looked more carefully at the whole of the appellate process in the Courts of Appeals.<sup>3</sup> We discovered that there were really two tracks of appellate justice: one for the rich or powerful (full oral argument, and judge-written, precedential, published opinions) and another for the “routine” cases (no argument, short, conclusory, unpublished, non-precedential opinions written by staff attorneys). Some sort of judicial triage was used (usually performed by the staff attorneys) to separate the deserving wheat from the “routine” chaff, such as habeas petitions and Section 1983 prisoner complaints.<sup>4</sup> Distressingly, over the years, the second track began to expand geometrically in volume and proportion. What started as a culling of a few prisoner petitions handled by a few staff attorneys expanded into nearly eighty percent of the docket, which was assigned to a shadow judiciary of staff attorneys, who eventually came to outnumber the judges.

It seemed so obvious to us that there was a simple solution to the problem of appellate overload: more judges. However we found significant opposition to that solution from the least likely opponents, the courts themselves. The arguments for a small federal judiciary disintegrated under close scrutiny<sup>5</sup> leaving only a worry about how the infusion of more “judge-power” might diminish the prestige of the existing judges. That did not sit well with the notion of judicial process Bill taught and I learned. The result was several more articles, again in prestigious reviews,<sup>6</sup> and a monograph published by the Oxford University Press.<sup>7</sup>

Along the way we discovered a mutual interest in the Conflict of Laws and developed it into a compact student treatise, *Understanding Conflict of Laws*,<sup>8</sup> which became the model for Lexis’s extensive collection of similar

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3. William L. Reynolds & William M. Richman, *An Evaluation of Limited Publication in the United States Courts of Appeals:—The Price of Reform*, 48 U. CHI. L. REV. 573 (1981) (study commissioned by Federal Judicial Center and published separately as a monograph by the Center); William L. Reynolds & William M. Richman, *Limited Publication in the Fourth and Sixth Circuits*, 1979 DUKE L.J. 807 (1979).

4. William M. Richman & William L. Reynolds, *Elitism, Expediency and the New Certiorari: Requiem for the Learned Hand Tradition*, 81 CORNELL L. REV. 273 (1996).

5. *Id.*; WILLIAM M. RICHMAN & WILLIAM L. REYNOLDS, *INJUSTICE ON APPEAL: THE UNITED STATES COURTS OF APPEALS IN CRISIS* (2012).

6. *See supra* note 4; William M. Richman & William L. Reynolds, *The New Certiorari Courts*, 80 JUDICATURE 206; William L. Reynolds & William M. Richman *Studying the Deck Chairs on the Titanic*, 81 CORNELL L. REV. 1290 (1997).

7. *See* RICHMAN & REYNOLDS, *supra* note 5.

8. WILLIAM M. RICHMAN, WILLIAM L. REYNOLDS & CHRISTOPHER A. WHYTECK, *UNDERSTANDING CONFLICT OF LAWS* (4th ed. 2013).

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works for most law school courses. Later we added a casebook.<sup>9</sup> We flourished and reaped *dozens* of dollars each. Perhaps the financial remuneration was trivial, but the books and a few more articles resulted in our being welcomed into the small but distinguished circle of American choice-of-law scholars.

Well, what was it like to write with Bill? It was hard work (isn't all writing hard work?), but the fellowship made it fun also. At heart, I am a bit needy (for ratification, I guess), and Bill was always there to reassure me that we were not producing junk. We had different writing styles, work styles and schedules, but I cannot remember a serious disagreement during the course of all of the projects. Since Bill's and my forty-year collaboration is so unusual, I have been asked by other professors whether I recommend co-authorship as a work style.<sup>10</sup> My response usually is that if you can work with my co-author, I recommend it; otherwise I am agnostic.

Others, with more exposure than I have, commented on Bill as a colleague and his contributions to the development of the law school and to the bar.<sup>11</sup> I can offer the perspective of an alum who was not part of the process of Maryland's steady progress toward excellence, but watched it with interest. When I chose to go to law school, I asked my undergraduate career advisor about Maryland. He responded that it was in the middle of the pack. I doubt anyone would offer that appraisal today.

Again with my unusual status as an insider/outsider I can offer an observation that may not have occurred to others. In the last forty years, as Maryland ascended the ranks of American law schools, it became the target of other school's lateral recruiting efforts. I can recall at least seven or eight stellar scholars that the big boys have poached over the years. Through it all Bill stayed and, to my mind, represented the intellectual glue that bound together three generations of teacher/scholars. The law school might well have followed a different trajectory but for Bill's presence to remind that the primary tasks of a law faculty were teaching and scholarship. No small feat.

I cannot end my thoughts on Bill's career without adding an odd observation. One of the characteristics that have made Bill so unique in the

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9. DAVID H. VERNON, LOUISE WEINBERG, WILLIAM L. REYNOLDS & WILLIAM M. RICHMAN, *CONFLICT OF LAWS: CASES MATERIALS AND PROBLEMS* (2d ed. 2002).

10. In the legal academy, a co-authorship seems to be worth fewer prestige points than single authorship. When I explained that to one of my colleagues in the physics department, he responded that the opposite was true there. A single authorship often warranted the question: Why couldn't he find anyone else to work with?

11. Gordon Young, *Bill*, 74 MD. L. REV. 697 (2015); Shale Stiller, *William L. Reynolds, The Legal Polymath*, 74 MD. L. REV. 700 (2015).

legal academy is the number of courses he has taught. By Shale Stiller's reckoning:<sup>12</sup>

- Contracts
- Constitutional Law
- Conflict of Laws
- Legal Method
- Antitrust
- Art Law
- European Union Law
- Legal Process
- Business Associations
- Civil Procedure
- E-Commerce
- Comparative Public Policy and Law Reform
- Torts
- International Business Transactions
- Legal Profession
- Basic Business Concepts
- Legal History
- Income Taxation
- Federal Jurisdiction
- Remedies

Stiller, no lightweight himself in the diversity of his practice then wrote:

I am tempted to write that no other professor at any American law school has taught such a diverse array of courses. I cannot prove it, but until someone who has the time to communicate with every law school in the country disproves my conclusion, I will proclaim it loudly, or, to put it in legalese, the virtually irrefutable presumption is that Bill Reynolds is the nonpareil legal polymath.<sup>13</sup>

I can add that from the point of view of an academic, Stiller's presumption holds up. I have taught on three faculties over a period of forty years, attended countless meetings, symposia, conferences and the like and have never encountered anyone who has covered so much of the curriculum. To paraphrase a baseball writer's description of the astonishing range of Paul Blair, the great Oriole centerfielder, "three quarters of the earth is covered with water; the rest is covered by Bill Reynolds."<sup>14</sup>

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12. Stiller, *supra* note 11, at 701.

13. *Id.*

14. It turns out to be very difficult to find the origin of this aphorism. It has been used by many to describe excellent athletic range in a variety of sports. The earliest I could find was a reference to the Phillies' Gary Maddox, whose career post-dated Blair's. Of course, it goes with-

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It is commonplace on law faculties for the dean, when calculating annual “merit raises,” to ask faculty members to prepare summaries of their yearly activities. Similarly it is common for faculty members to include the teaching of an unfamiliar course (or even changing casebooks) because of the time and effort required. The general equation is that preparing a new course requires roughly the same amount of time and effort as a law review article. Now, as others have remarked, Bill has written somewhere in the neighborhood of six books, forty articles, chaired every significant law school committee, and made lasting contributions to the law school, the legal community and the development of the law.<sup>15</sup> These are major accomplishments, but that record of achievement while constantly taking on the burden so many new preparations, is probably unique in American legal education.

It is obvious that Bill was a mentor to me, but in a very odd way. I could not master his teaching style, and as scholars he always treated me as an equal. But I always admired Bill’s diligence and empathy. He came to work every day, even when outside demands on his time or health challenges were great. His door was always open, to students, of course, but also to junior faculty beginning to master the crafts of teaching and scholarship. This was the clearest way I tried to follow his example. He was a mentor par excellence, and he instilled in me the desire to be the same. His was the example I looked to when it came time to counsel a struggling student, and even more so, when I tried (sometimes successfully) to help more junior colleagues. He was, to put it succinctly, my mentoring model. I find it hard to believe that he did not instill the same mission in countless other students and colleagues. In that way he contributed not only to his students and colleagues, but to their students and colleagues as well. His career stands as a lasting gift to the school, the academy, and the profession.

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out saying that all of those claims about astonishing are false. By contrast, the ones made here about Blair and Reynolds are true.