

Others questioned whether David was really suited to a job with oral advocacy as a culminating moment. David had undergone a long course of medical interventions, including surgery leaving him with a hoarse, whisper-like voice. Was he really suited to be an oral advocate? All who knew David knew that he was a superb teacher, handling classes of 150 and 200 students, which was more physically taxing than addressing nine Supreme Court justices for half an hour. In this as in every other respect, David proved my predictions correct.

Because of David's legendary expertise in matters at the very core of the Solicitor General's work, the other members of the office regularly consulted him and tested their work against his intuitions. After I left the office, the new Solicitor General, Kenneth Starr, urged David to continue as his deputy. To the delight of his colleagues, David stayed on for two years. During his time in the office David argued ten cases before the Court and prevailed in nine. Of course, like other members of the office he contributed to innumerable briefs, the arguments of which fell to other members of the office, because we very much tried to even out that privilege among all the members of the staff.

It was a delight to me that when David finally returned to Harvard, he also had an occasional consulting practice focused on his areas of expertise. So did I, and sometimes we found ourselves on opposite sides, no more dramatically than in the signal case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*⁴⁷

I cannot leave this brief account without inviting the reader to revisit two of the elegant short essays of which David was a master: *A Cave Drawing for the Ages*⁴⁸ and *The Death of the Up-Down Distinction*.⁴⁹ What stands out about these is that he makes definitive points with humor, absolute accuracy, and a wonderful absence of unnecessary adjectives and adverbs. David, your voice will continue to resonate in the heavenly chorus of reason, wit and wisdom. *Ave atque vale!*

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As I look back twenty-five years later, I cannot recall for certain whether it was the first or the second day of sitting in David Shapiro's

⁴⁷ 509 U.S. 579 (1993).

⁴⁸ David L. Shapiro, *The Case of the Speluncean Explorers: A Fiftieth Anniversary Symposium — Foreword: A Cave Drawing for the Ages*, 112 HARV. L. REV. 1834 (1999) (foreword to a symposium on the fiftieth anniversary of Professor Lon L. Fuller's article, *The Case of the Speluncean Explorers*, 62 HARV. L. REV. 616 (1949)).

⁴⁹ David L. Shapiro, *The Death of the Up-Down Distinction*, 36 STAN. L. REV. 465 (1984).

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civil procedure class, but I do know that by the end of my first week of law school, I had decided that I wanted to be a law professor. Each and every single day, David turned in a masterclass performance at the front of the room. He was absolutely brilliant and yet never intimidating. Navigating this balancing act was easy for David. This is because he drew his students in with his legendary good humor and passion for the subject and for the study of law more generally. Through it all, one thing above all else struck me: *David was having fun up there*. I thought to myself: *I want to do that too*.

To my great fortune, David took me under his wing and helped me eventually to achieve that ambition. I took David's statutory interpretation seminar and he supervised my third-year paper. He also invited my classmate Kannon Shanmugam and me to serve as teaching assistants for his Civil Procedure class during our 3L year while he was also briefing a procedure case before the Supreme Court.⁵⁰ We watched David model how to be a great lawyer while also bringing an entire class of students along to master a subject and come to love it as he did. There is not a day that goes by that I do not draw on things that David taught me that fall.

All this being said, the real joy of knowing David came after I graduated, when he remained an enormously impactful mentor and became a cherished friend and, in time, coauthor. David supported my career at every turn, starting with helping me secure a clerkship with Justice Ginsburg and continuing with helping me land my first academic job. Along the way, he could not have been more generous. David read every line of everything I ever wrote as a scholar, including my lengthy book on the history of habeas corpus in wartime. His feedback spanned from exceptionally insightful big-picture comments to the smallest of details — always peppered with encouragement. He also interspersed hilarious notes throughout. For example, when I once used the word “impacted” in a draft, David returned to me both his comments and an article entitled “*Impact*” as a Verb and the Decline of Western Civilization. (Per his suggestion, I substituted the word “influenced.”)

David loved the craft of writing almost as much as he loved the law, and he taught me a great deal about both. In going over one of my projects, David wrote me:

⁵⁰ David taught the case to his students that semester and invited Kannon and me to argue it before the class to a panel comprised of himself and his colleagues Dan Meltzer and Larry Tribe. I will never forget the thrill of the experience — or the nerves I had that morning. (I would be remiss if I did not also note that this is where Kannon got his start as the great Supreme Court advocate he is today, a fact that made David very proud.)

Strunk & White's Rule No. 1 is "Avoid unnecessary words."⁵¹ The rule is a superb illustration of itself. They might have said: "Notably, we would like to begin by pointing out that by far the most important rule, and one that is therefore given precedence here, is the mandate, however, tempting it may be to do otherwise, to avoid the use of words that one may regard, or that others may perceive, as unnecessary or superfluous."

As though there was any debate over how spectacular a writer David was, one need only read his essay *The Death of the Up-Down Distinction*⁵² to appreciate his mastery of the craft.

Behind all of this stood one of the most accomplished legal scholars of a generation. After graduating first in his class from Harvard Law School, clerking at the Supreme Court for Justice Harlan, and practicing at Covington & Burling in Washington, D.C., David joined the Harvard Law School faculty in 1963. Having studied under the great Henry Hart, David played an important role in reviving the casebook that his professor had cowritten to establish the field of Federal Courts, *Hart & Wechsler's The Federal Courts and the Federal System*.⁵³ David went on to work actively on five more editions of the book — six in total — through its current seventh edition.⁵⁴ But David was not done. He remained an active consultant on the book and its supplements right up until he died, counseling those of us privileged enough to carry on its legacy as we began preparations for an eighth edition.

David's influence in the field of Federal Courts,⁵⁵ as with the fields of Civil Procedure⁵⁶ and Statutory Interpretation,⁵⁷ was nothing short of massive. His scholarship was of course well-written, yet what I love about it is the fact that he steadfastly focused on important and consequential real-world issues, offering exemplary analysis and brilliant insights while at times taking creative approaches.⁵⁸ Rereading his articles now in celebration of his life is a true joy.

David's influence swept even more broadly. In addition to teaching and inspiring generations of law students and being a scholar of enor-

⁵¹ The period goes outside the quotation marks, per *Hart & Wechsler* tradition. David once counseled those of us on the *Hart & Wechsler* team that here, too, any other rule would result in the decline of Western civilization.

⁵² See Shapiro, *supra* note 49.

⁵³ Here, David worked alongside the other original author, Herbert Wechsler, as well as Paul Bator and Paul Mishkin. See BATOR, MISHKIN, SHAPIRO & WECHSLER, *supra* note 32.

⁵⁴ See FALLON, MANNING, MELTZER & SHAPIRO, *supra* note 30.

⁵⁵ In addition to countless important articles, this work included David's extraordinary book on federalism, DAVID L. SHAPIRO, *FEDERALISM: A DIALOGUE* (1995).

⁵⁶ There are too many outstanding articles to pick a favorite here.

⁵⁷ Here, I must cite a favorite article, David L. Shapiro, *Continuity and Change in Statutory Interpretation*, 67 N.Y.U. L. REV. 921 (1992).

⁵⁸ See, e.g., David L. Shapiro, *The Role of Precedent in Constitutional Adjudication: An Introspection*, 86 TEX. L. REV. 929 (2008).

mous impact, David was also a reformer, a successful advocate (including during a stint in the Solicitor General's office and work on amicus briefs that continued right up to his death), and a public servant. In this respect, David was, as I once wrote, "the true Renaissance man of legal academia."⁵⁹

David was also an intellectual's intellectual. He loved ideas, and when it came to his scholarship, he never had an ax to grind except when it came to possessing limited patience for those who did not share his devotion to civility and respectful discourse. When I was offered the incredible honor of working alongside David, my former professor Dick Fallon, John Manning, and Jack Goldsmith as part of the *Hart & Wechsler* team, I felt like I had won the lottery.⁶⁰ Even though my time overlapping on the book with David spanned only five years, I will treasure it always as one of the most special and rewarding periods of my intellectual life.

As I look back and take stock of David's extraordinary life, what I appreciate most about David beyond his legendary humor and brilliance was his humility, integrity, resilience, and kindness, which defined the man he was. David carried his many successes lightly while holding himself to the highest standards. David was also resilient in the face of many extraordinary health challenges, never permitting them to define him or slow him down. As to his kindness, David had a particular talent for reaching out during difficult times at just the right moment to offer encouragement when it was most needed. David was also a devoted spouse to his life partner of more than sixty-five years, Jane. I treasure the memories of experiencing their hospitality first as a student, when they welcomed his classes into their home (which also doubled as a spectacular art gallery), and over the many years that followed.

As I write these words, I find it incomprehensible that David is gone. His influence on my life — and that of so many other students — was nothing short of profound. As I wrote when David retired from the classroom:

When I decided to become an academic myself (with David's gracious encouragement and generous mentoring), I was asked during interviews if there was a model on which I would draw in my own teaching and scholarship. The answer was obvious. I could only hope to be half as good as David.⁶¹

That is still so true.

⁵⁹ Amanda L. Tyler, *David L. Shapiro '57: A Judgment, Stated*, HARV. L. BULL., Summer 2006, at 11.

⁶⁰ This being said, I deeply regret that I never had the chance to work on the book with the great Dan Meltzer, my Federal Courts professor. Looking back, I consider myself especially blessed to have studied under David, Dan, and Dick.

⁶¹ Tyler, *supra* note 59, at 11.