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David W. Robertson: In Memoriam

*Hon. John W. deGravelles**

David Robertson was my hero. He was what I aspired to be: a brilliant maritime scholar, an inspiring teacher, an outstanding lawyer, and a wonderful human being. Because David was from the piney woods of central Louisiana and a graduate of LSU Law School, my alma mater, I had the illusion that my goal was ascertainable. But alas.

After getting his law degree from LSU Law School in 1961, he went on to capture two additional degrees from Yale University. He began his teaching career at LSU and then returned to Yale as a Sterling Fellow for a year. After lecturing at Leeds University in England, he joined the faculty at the University of Texas Law School where, except for a four-year period practicing law, he flourished for the rest of his career.

Unfortunately, I missed David by a semester when he returned to teach at LSU as a visiting professor and Bailey Lecturer from 1974 to 1975. My friends who took David's classes during that time tell me he was unforgettable. David's own assessment of his early years of teaching was much more modest: "my first few years as a law teacher were light-years distant from what I imagined . . . and LSU took care to pay me no more than what I was worth."¹

Nor did I know him as a practicing lawyer, but two of my colleagues on the federal bench, the late Judge Jim Brady and Judge Dee Drell, both practiced with David and described him as brilliant. I do not know for sure what led David from the practice back to teaching, but it could well have been his view that "the demands of law practice are sharks with teeth—opposing counsel and busy trial judges regularly kill the weak—whereas law students rarely bite their teachers."²

But his skill as an advocate clearly never left him. Less than two years before he died, David argued an important maritime case before the Ninth Circuit Court of Appeals, *Batterton v. Dutra Group*.³ His argument was

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1. David W. Robertson, *Alvin Rubin's Last Dissent*, 70 TEX. L. REV. 7, 8 (1991).

2. *Id.*

3. *Batterton v. Dutra Group (Oral Argument)*, U.S. CTS. FOR NINTH CIR. (Feb. 8, 2017), https://www.ca9.uscourts.gov/media/view_video.php?pk_vid=000010915 [<https://perma.cc/HA7K-M95N>].

quintessential David: clear, precise, persuasive, indeed seemingly irrefutable, and founded on an unparalleled depth of knowledge of his subject, all of which are reflected in his responses to the court's questions and in the court's ultimate opinion.⁴

His talent as a teacher was similar. Although I never had the good luck to take a full semester course with David, students who did idolized him. An example:

Many people with that level of accomplishment and stature can and do treat those less experienced in their field with disdain or vitriol. Not David Robertson. Instead, he was nurturing and supportive. He was patient. In short, he cared just as much about how we conducted ourselves as lawyers as the substance of our arguments. And to that end, he did his best to set an example for his students.⁵

I did, however, audit a three-week course he taught for Tulane University Law School's summer program abroad in Rhodes, Greece. His subject was the application of state law in a maritime case, a micro-version of his classic work *Admiralty and Federalism*.⁶ I felt like Grasshopper at the feet of Master Po.⁷ I also had the privilege of watching David lecture annually in connection with LSU's Alvin B. Rubin Maritime Seminar, which he generously supported from its inception until he died. His performances as a speaker demonstrated why he had a reputation as an outstanding lecturer. Occasionally, he would bring his guitar and illustrate a point of maritime law with an original song. The last time he played and sang, it occurred to me that David was the Willie Nelson of maritime law,

4. *Batterton v. Dutra Grp.*, 880 F.3d 1089 (9th Cir. 2018). The Supreme Court granted certiorari, *Dutra Group v. Batterton*, 139 S. Ct. 627 (U.S. Dec. 7, 2018) (No. 18-266). Unfortunately for the plaintiffs, David did not participate in the argument before the Supreme Court, which reversed the Ninth Circuit, *The Dutra Group v. Batterton*, 139 S. Ct. 2275 (2019).

5. F. Daniel Knight, *Remembering Professor Robertson*, CHAMBERLAIN HRDLICKA: MARITIME PROCTOR BLOG (Feb. 28, 2019), <https://www.chamberlainlaw.com/maritime-proctor/remembering-professor-robertson> [<https://perma.cc/V2A8-8NMK>].

6. DAVID W. ROBERTSON, *ADMIRALTY AND FEDERALISM: HISTORY OF PROBLEMS OF FEDERAL-STATE RELATIONS IN THE MARITIME LAW OF THE UNITED STATES* (1970).

7. For the uninitiated, "Grasshopper" was the nickname given to a young apprentice Shaolin monk who learned at the feet of Master Po in the television series *Kung Fu*.

a performer he resembled in both looks and sound. Indeed, David was a rock star in the world of maritime law.

After David's death, David's son Tom—a lawyer practicing in Dripping Springs, Texas—was kind enough to provide me with the “complete works” of David's songs written for his law school students and seminar attendees. The following is an example of David's songwriting talents and sense of humor.⁸

Don't Let Your Babies Grow Up to be Lawyers (to be sung to the tune of “Don't Let Your Babies Grow Up to be Cowboys,” as performed by Willie Nelson):

Lawyers ain't easy to love, no they're hungry and lean.
They'd rather talk for an hour than say what they mean.
Lawyers love \$\$ and trouble and worry,
Litigation and conflict and strife.
Your case is your worry, them lawyers don't hurry; They're into
this business for life.

[CHORUS]

Mamas don't let your babies grow up to be lawyers.
Don't let 'em file papers and write them old pleas; Make 'em
cowgirls or dentists or thieves.
Mamas don't let your babies grow up to be lawyers.
Cause they'll never stay quiet and they're mostly uptight, And
they've always got something to prove.

Lawyers like musty old courtrooms and vodka for breakfast:
Circumlocution, contention, confusion and cash.
Those that don't know them might hire one, But those that do
mostly will leave them alone.
If you ever hire one she's your friend for life, Though her heart is
as cold as a stone.

REPEAT CHORUS.

But I knew David best through my work with him on cases in litigation. David was often retained to work with lawyers on cases involving cutting edge issues of maritime law. From seaman status to vessel status to maritime remedies to damages, it was a rare case that made its way to the Supreme Court where David was not somehow involved. There was no more powerful voice to speak on an issue of maritime law

8. Reprinted with the permission of Thomas Wyatt “Tom” Robertson.

than David, and, indeed, David's work was frequently cited by the Supreme Court in its maritime jurisprudence.⁹

One of the greatest pleasures and honors I had in my career as a lawyer was to work with David in the litigation arising out of the Deepwater Horizon disaster where the issues were fresh and the stakes were high.¹⁰ I was asked by the Plaintiffs Steering Committee to work with David on various issues of maritime law, and, here, I had the opportunity to study that amazing mind at work. He was unfailingly patient with me but uncompromising in his insistence on excellence.

Indeed, David's confidence in his knowledge of the subject sometimes crept into the titles of his articles, such as *The Outer Continental Shelf Lands Act's Provisions on Jurisdiction, Remedies and Choice of Law: Correcting the Fifth's Circuit's Mistakes*.¹¹ And he relished a good fight. He did direct—and successful—combat with Harvard torts professor John C.P. Goldberg as to the proper interpretation of the Oil Pollution Act in connection with the Deepwater Horizon oil spill.¹²

In writing about one of his heroes, Judge Alvin B. Rubin, David could well have been writing about himself and his credo. David took his work "seriously but not self-righteously."¹³ David wrote, "In going about our lives and our jobs it is necessary each day to re-invent ourselves, to construct ourselves along desirable and useful and honest lines so that real work and meaningful human interaction can occur." David was one of the few who followed his own advice. It was a privilege to know him.

9. See David W. Robertson, *A New Approach to Determining Seaman Status*, 64 TEX. L. REV. 79 (1985) (cited in *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995) and *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 354 (1991)); David W. Robertson, *Injuries to Marine Petroleum Workers: A Plea for Radical Simplification*, 55 TEX. L. REV. 973 (1977) (cited in *Herb's Welding, Inc. v. Gray*, 470 U.S. 414 (1985)).

10. *In Re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, MDL No. 2179, Section J* (E.D. La.).

11. 38 J. MAR. L. & COM. 487 (2007).

12. David W. Robertson, *The Oil Pollution Act's Provisions on Damages for Economic Loss*, 30 MISS. C. L. REV. 157 (2011); *OPA and Economic Loss: A Response to Professor Goldberg*, 30 MISS. C.L. REV. 217 (2011); cf. John C.P. Goldberg, *Liability for Economic Loss in Connection with the Deepwater Spill 7*, GULF COAST CLAIMS FACILITY (Nov. 22, 2010), available at <https://dash.harvard.edu/bitstream/handle/1/4595438/Report%20on%20Economic%20Loss%20Liability%2011%2022%2010.pdf?sequence=1> [<https://perma.cc/8PTN-PZJF>] (reprinted in 30 MISS. C. L. REV. 335 app. (2011)); *OPA and Economic Loss: A Reply to Professor Robertson*, 30 MISS. C. L. REV. 203, 204 (2011).

13. Robertson, *supra* note 1, at 9 (quoting Edith Hollan Jones, *A Farewell to Alvin B. Rubin*, 70 TEX. L. REV. 1, 1 (1991)).

