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## A Tribute to Professor David Gregory

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# A TRIBUTE TO PROFESSOR DAVID GREGORY

*Donald N. Zillman\**

I had the pleasure of knowing David Gregory in three different contexts. For most of our acquaintance, we were Dean and senior faculty member. For all of our time, we were colleagues in introducing the students of the University of Maine School of Law to the mysteries of tort law. Since the mid-1990s, we and the distinguished practitioner, Jack Simmons, were the authors of *Maine Tort Law*.<sup>1</sup> In these three contexts I encountered different Davids or, more accurately, different facets of a diverse and memorable colleague.

Part of the job of any new Dean is to discover his faculty. The University of Maine in 1990 provided a wealth of memorable characters who did not fit easily into stereotyped categories. David was our one Mainer, a coastal native and an honors graduate of the University of Maine School of Law. However, he was also formed by his experiences at Duke, Harvard, and in Washington. He had an aura that made him a marvelous contributor to our exchange program with the University of Buckingham in the United Kingdom. Students who shared trips around legal London with David could be forgiven for assuming that he had spent his professional life around the Houses of Parliament and the Inns of Court.

David's experience with Deans and Associate Deans (and he knew many in his nearly thirty years at Maine law) left him cautious about Deans. They could occasionally do things *for* you. More commonly, they could do things *to* you. While David was far too polite to express it, I suspected he carried with him the late journalist I.F. Stone's observation about public officials: "Always assume they are lying, until proven otherwise." My fond memory is that David and I agreed on far more matters than we disagreed. From time to time, I would remind him that I was still teaching and writing and engaged in the work of a faculty member. That wasn't enough to give me full credibility as a member of the club, but it helped.

Since David was a strong believer in faculty governance, he would assert faculty prerogatives when necessary. The emphasis on "necessary" made David a splendid colleague in a governance system that allows both strong faculty involvement and a strong Dean. Some colleagues can spend too much of their time questioning the Dean's decisions on the size of paper clips or the food in the snack bar. David's judgment was invariably good. He avoided trivia and only weighed in on matters of importance. He served as the canary in the coal mine. If David was concerned about a matter of shared governance, the Dean was well advised to reassess his or her position. Not to change it, necessarily, but to weigh the pros and cons with greater care before reaching a final decision. I would attribute much of Maine Law's success in shared governance to David's quiet performance of this role.

In recent years, David also became an effective spokesperson for student concerns. I attribute much of this to Jane's good influence. David had the challenge

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1. SIMMONS, ZILLMAN & GREGORY, *MAINE TORT LAW* (1999).

of living with a perceptive new, and then seasoned, law student in the middle of his teaching career. All professors would benefit from such a mentoring. The David that emerged from Jane's tutelage was no less demanding of his students. But, his empathy grew, particularly as it involved students who balanced jobs, families, and school on modest budgets—a common feature at Maine Law. Happily, David's pleas for his students (and he viewed them as all "his" students) often reached an administrative staff just as willing to work for the students' benefits.

David and I taught torts very differently. At a time when the 1L torts course covered both semesters, I regarded this variety as a valuable part of the educational process. I attended several of David's classes. I was struck by the extent of David's preparation and by the precision of his approach to cases. I also suspected that David could teach a class using fewer words than any other law professor in the country because they were exactly the right words. Classroom legends are made of such stuff.

David's rigor paid off in the lives of his students. I delighted in visiting with members of our Moot Court and Trial Advocacy teams who had achieved regional and national honors. A common explanation for their success was their ability to be prepared for any question thrown at them. The most troubling question would often address core issues of legal structure and justice. While their competitors stumbled, the Maine students thrived. David's preparation of them was often cited as a reason. Similar tributes came from graduates ten and twenty-five years removed from Law School at our alumni gatherings.

David's fascination with the essentials of tort law made him an obvious collaborator on Maine Tort Law. The division of work was the easiest part of the book. Who else but David should write intentional torts, the heart of much of David's 1L mentoring. Jack Simmons and I drafted the chapters—products liability, professional torts, government torts, insurance—in which almost everything significant happened in the last three decades. David was challenged with chapters in which *nothing* precedential might have occurred since 1916.

David approached assault and battery, false imprisonment, nuisance, conversion, and trespass with characteristic thoroughness. He identified every case that reached the Maine Supreme Judicial Court in the last one hundred and seventy-five years. His introduction to the trespass chapter offers the scope of a Russian novel. "Dozens of reported decisions in trespass are actions brought to determine title to land. While interesting in themselves, they do not concern the elements of the tort of trespass." A two-page footnote with the extraneous cases followed. David then read the essential cases with Gregory precision, extracting the essential elements from the ancient opinions. His dissection of *Whittaker v. Sanford*,<sup>2</sup> Maine's contribution to false imprisonment law, should be required reading for any Torts casebook reader.

Throughout the text, David evidenced his love for the law, his respect for the legal process, and his love of the language. On the first page David could introduce Maine assault and battery law with: "From earliest times down to the present the Maine cases evince a general theme of distinctly gross motor skills. The manner of Mainers' waling on each other includes . . ."

His praise of *Whittaker*: "Like venerable English decisions, *Whittaker v. Sanford* stands by itself as a seminal authority. The decision contains not one

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2. 110 Me. 77, 85 A. 399 (1912).

citation to precedent. On its singular record the whole case is so suffused with the essential meaning of false imprisonment that the Court's opinion well deserves the study it has received."

A selection from the trespass chapter shows David's understanding of history and his delightful irreverence:

The Court did not say anything about the gist of the action. Of course, the initial trespass in *Russell v. Brown* was accomplished by an unlawful entry. A good guess might be that the illegality of continuing a structure on another's land is traceable to the original entry and that a judgment for entering and erecting the structure should not, as a matter of good policy, bar an action for the continuing. But, like raising a million dollars for the Watergate burglars, it would be wrong.

Enjoy the conciseness of David's introduction to conversion law:

Conversion is a complex tort in search of a simple definition. The puzzle of conversion lies in the variety of differing ways in which the tort can be committed. . . . Owing perhaps to the nature and customary handling of personalty, the DEW line of conversion of personal property is a good deal less distinct if it exists. While ownership and possession of both personalty and realty are often split, only personalty is ordinarily passed from hand to hand. Consider books from a library, automobiles in a garage, pets in a kennel, hats and coats in a cloakroom, equipment for lease, borrowed tools, and lost wallets, not to mention unwanted, unrequested Christmas cards received in the mail from worthy causes.

David also took pleasure in being the common sense Mainer: "At one time, way Downeast, down to Cherryfield and Deblois and that area, otherwise law-abiding people had the notion that anybody should be able to pick blueberries on anybody else's land, and so they did on the plaintiff's land and sold the yield to a cannery over to Jonesport."

Or, "If lawyers have one great fault, it is that they exalt abstract legal rules over reality with the consequences that they lose sight of reality and distort it. It therefore bears stating that demand and refusal are not empty formalities. They pertain to what occurs on the face of the earth."

David Gregory's talents benefitted the State of Maine in many ways. Kevin Concannon and Ed Godfrey have related David's role in the lengthy Pineland saga. District Attorney Mike Cantara recounts David's long service to York County as Maine Supreme Judicial Court advocate extraordinaire. David set the pattern for service by law faculty members (Merle Loper and Cab Howard followed David) in the delicate role of Executive Secretary of the judicial conduct committee in Maine. One of the finest tributes to David after his death came from Roberta Scruggs, the outdoor writer for the *Portland Press Herald*. Roberta reported David's role in helping to shape the legislation concerning the search and seizure powers of game wardens in Maine. David had impressed this outsider to the Maine legal community both with the reputation for integrity he brought to the task and with the justness of the solution he offered.

I had a similar experience in helping the Maine House of Representatives resolve a closely contested election (a common theme in December 2000). There in the file was David's summation of a similar contest eight years earlier. Thoroughly and thoughtfully, it reached the right conclusion in 1992. Its impact helped resolve the contest in 2000.

What most impresses me about these and other services to his native State is that David Gregory was called on both for his expertise in the area in question and for the soundness of his judgment. A former Dean of mine was fond of assessing people with the observation: "The world pays off on judgment." David met that test on countless occasions. The State of Maine is a better place for his services.