

JUDGE, TEACHER, FRIEND

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The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government.

William H. Moody, 1907

The words quoted above are inscribed in the remodeled foyer of the United States Courthouse at 6th and Market Streets in Philadelphia, the building where Edward R. Becker labored with unbounded enthusiasm, dedication, and skill for more than thirty years. Over the years, Ed became convinced that the previous entrance to the building did not convey the right message to the citizens who entered. The old entrance was dimly lit and suffused with an unmistakably bureaucratic air. Ed wanted a new design that was both welcoming and dignified, one that reflected the importance of the work that was done in the courthouse but that was also free of the pretension that he so abhorred. When he became chief judge, one of his many projects was the remodeling of the foyer. He spent countless hours with the architects and builders and personally chose the inscription quoted above.

Ed's choice was not an obvious one. The author of the quotation, William H. Moody, served on the United States Supreme Court for only about three years and is hardly one of our country's best known legal figures. The case in which the quoted words appear, *Chambers v. Baltimore & Ohio Railroad Co.*,¹ is obscure. And, at least to my ear, there is little poetry in Moody's language. But the choice of this quotation says much about Ed's view of the law, the court system, and meaning that he saw in the work to which he devoted his professional life.

Ed had a deep and unshakable faith in the judicial process and in our court system. The message behind the selection of the *Chambers* quotation, I believe, is the high importance of the work of the courts, including both the cases that attract public attention and the ordinary

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¹ 207 U.S. 142, 148 (1907).

cases on which attorneys and judges labor every day with little fanfare. In conversation, Ed was fond of expressing things in the unpretentious language of ordinary Philadelphians and, expressed in those terms, what I think Ed wanted to say to people entering the Philadelphia courthouse—lawyers, jurors, judges, witnesses, court staff—is something like the following: “Listen up! What you are going to do here is a big deal. It really matters. Give it your very best!”

That, at any rate, is how I think Ed felt each morning when he entered the courthouse. This feeling, I believe, explains the features of Ed’s professional life and work that are well known to everyone who is familiar with the federal courts: his remarkable (and famously long) opinions, his incredible energy and capacity for work, the marathon oral argument sessions over which he presided, his affection for his colleagues and wide circle of friends and acquaintances, and his tireless efforts to improve the operation of the courts.

The most tangible legacy of Ed’s professional life, of course, is the impressive collection of opinions that he wrote. Ed relished the opportunity to tackle the biggest and toughest cases, and he wrote on many of the most widely discussed issues of the day. But I think that Ed particularly welcomed the opportunity to labor on the unheralded infrastructure of the law, to write on the difficult technical and procedural issues that other judges and lawyers in the field know are critically important but that often escape widespread public attention. And although Ed was one of the most accomplished and influential federal judges in the country, no case was too small to merit his most thorough consideration. I can recall numerous relatively minor cases in which Ed’s questions at argument showed that he had devoted as much thought and effort to the case as he would to the biggest matters that came before our court. Ed never lost sight of the importance of ordinary cases to the parties and their attorneys. He identified with everyday practicing lawyers, and he never forgot the collective importance of all the ordinary cases that are resolved in the courts.

Like most of the other judges on the Third Circuit, I sometimes teased Ed about the length of his opinions. Some were so long that he included a table of contents at the beginning. But there were good reasons for the length, reasons that I believe go to the heart of Ed’s vision of the way the courts should operate. Ed was never one for legal shortcuts. He felt deeply that every relevant fact and argument must be given full consideration. This was essential for good decision making and, in any event, was necessary in order to show simple respect for the attorneys, the parties, the tribunal whose decision was be-

ing reviewed, and any other courts that had issued opinions on the same legal question.

Ed's opinion writing practices also reflected, I believe, his faith in the ability of an appellate court to instruct. I sometimes wondered whether anyone other than the parties would ever read many of the opinions that I wrote, but as far as I could tell Ed never felt that way about what he wrote. And his feeling was justified. Ed's opinions were and continue to be widely read. I have been told many times by practicing attorneys that they search out Ed's opinions because they so often provide a thorough road map of a difficult area of federal law. Ed's opinions reflect the view that more is more. They do not zoom in. They are panoramic. They take in and explain the surrounding legal landscape. They provide history, background, context, and—not infrequently—commentary on issues other than the precise legal issue that the opinion resolves. Ed was a great teacher with a lot to say, and just as he faithfully tried to consider every relevant argument in his own decision-making process, I believe he felt that he could assist others in future cases through comments in his opinions.

Ed's approach to oral argument mirrored his approach to opinion writing; both the demands of the decision-making process and simple respect for the attorneys and their clients required complete exploration of every relevant fact and argument. Whenever I sat with Ed, I knew that the panel would hear oral argument in far more than the average number of cases and that the arguments would continue well beyond the allotted time. On the Third Circuit, a case is listed for oral argument if any of the three judges on the panel asks for argument, and Ed invariably asked for argument in more cases than any other judge on the court. And when he was presiding—which was most of the time—he presided over the longest oral argument sessions the court has ever seen. When the red light went on, signifying that the attorney's argument time was up, attorneys unfamiliar with Ed's practices would prepare to sit down, but Ed would almost always say, "Don't worry about the light, you're on our time now." If Ed had issues that he wanted to explore—and that was most of the time—the red light provided no avenue of escape. "If you press the attorneys hard enough," Ed once told me, "useful things generally come out." And he was very often correct. Ed had a remarkable ability to tunnel deep below the surface of a case and find out what was really going on, what the parties were really up to, why a particular legal issue was really important, things that were not touched on in the briefs or the district court record or in any secondary literature.

But while Ed was a relentless questioner at oral argument, he also had deep respect and affection for the attorneys who appeared before him. One of his reasons for listing so many cases for argument, he said, was “out of respect for the bar.” Particularly if he sensed that a lawyer had never before appeared in the court of appeals, he wanted to be sure that the lawyer understood that the court had wrestled with every argument that the lawyer had made.

Not only did Ed throw himself into his own cases, but he was deeply devoted to improving judicial administration. In 2002, his work earned him the prestigious Devitt Award, which is given each year to the one judge who has made the most significant contribution to judicial administration, the rule of law, and the improvement of society.

Ed also had a deep affection for the people with whom he worked. I do not think there could possibly be a better colleague. He was devoted to the Third Circuit as an institution, and he was a true friend to every judge on our court. He was the heart and soul of the court. He aptly called himself “the court ward leader,” the person to whom everybody, judges and staff, looked for help with all sorts of problems, professional and personal, and he always made time to help. I cannot count how many times over the years I called Ed or stopped by his chambers to discuss a problem or to ask for advice, and although I know he was always busy, he invariably made it seem as if he had all the time in the world to devote to my concerns.

Ed had an amazing capacity for friendship, which grew out of the way he felt about people. He respected people. He was interested in people. He wanted to know them, and he wanted to know about them. I was continually astounded by the number of people Ed knew. When I met a judge from some faraway circuit or district for the first time, I knew that about ninety percent of the time we had at least one mutual friend, Ed Becker.

Ed knew people from all walks of life. Although he was a most uncommon man, one of the most respected and influential judges in the country, he viewed himself as a common man. He rode the Frankford El to work. He read the *Philadelphia Daily News* every afternoon.

Ed’s approach to his work and to life—his Olympian standards, his thoroughness, his far-flung interests, his penchant for projects of improvement, and his devotion to people—demanded long, hard work, and Ed was the hardest working person I have ever known. During my first year on the Third Circuit, Ed and I were assigned to a panel that

sat for a week in the Virgin Islands. Before I went, I thought that this sitting might be a bit easier than the typical sitting in Philadelphia, but with Ed presiding, it did not work out that way. The arguments and conferences were long and grueling.

We did, however, have one free afternoon, and Ed arranged for the three panel members to take a boat trip for snorkeling at the Buck Island underwater national park. We boarded a catamaran and set off on the half-hour trip to the park. Everyone on board was drinking tropical drinks and enjoying the scenery and fresh sea air. I looked around for Ed and saw that he was sitting in a corner, with a huge stack of papers in his lap, reading. He was working on an article discussing the first sixteen years of the Federal Rules of Evidence,² and Ed was reading every single law review article that had been written about the rules during the previous twenty years.

Ed once gave me advice about how to save time at the barber. He said he told the barber to cut the hair on the right side of his head first, and while the barber was doing that, he was reading off to the left. When the barber was done on the right, they would switch. Ed was a tireless worker, but his labor was a labor of love. He loved his work because he was sure of the importance of the work of the federal courts. Like Justice Moody, he was sure that our rights and “orderly government” depend on the public’s confidence that our courts are available to hear their grievances, large and small, and to resolve them fairly and competently.

Ed was a Philadelphian through and through, and I think he would have gotten along famously with the most famous Philadelphian of all time. Like Ben Franklin, Ed was always looking for new projects to make things better. And most of the time, Ed’s projects were successful. When he was chief judge of the Third Circuit, he wanted to accommodate lawyers and litigants in New Jersey and western Pennsylvania, and he wanted young lawyers and law students in those locations to be able to see arguments before our court, so he started the practice of having the court sit in Newark and Pittsburgh twice a year. When the clerkship hiring process got out of hand, when judges began interviewing prospective clerks in the fall of their second year of law school, Ed was instrumental in persuading most of the

² See Edward R. Becker & Aviva Orenstein, *The Federal Rules of Evidence After Sixteen Years—The Effect of “Plain Meaning” Jurisprudence, the Need for an Advisory Committee on the Rules of Evidence, and Suggestions for Selective Revision of the Rules*, 60 GEO. WASH. L. REV. 857 (1992), reprinted in 142 F.R.D. 519 (1992).

judges and law schools to agree to a saner, uniform schedule. When the number of immigration cases and particularly asylum cases shot up in recent years, Ed became concerned that many aliens whose very lives might be at stake were not receiving adequate representation, so he organized an extensive program to recruit able lawyers to take these cases pro bono and to provide training.

Several years ago, Ed told the judges of the Third Circuit that his cancer had reappeared and that he was going to undergo a course of treatment that was described as experimental. He underwent this treatment, which was often debilitating, for more than three years, and during this time, he exhibited courage, optimism, and selflessness. He never complained, and he worked as hard as ever. If anything, the pace of his work seemed to quicken. During the final months of his life, in addition to his case work, Ed traveled regularly to Washington at his own expense to try to work out a solution to the asbestos litigation crisis. In his final weeks, he succeeded in opening up Chestnut Street in front of Independence Hall to restore the dignity of this symbol of liberty. As a reflection of Ed's efforts, that portion of Chestnut Street is now named "Edward R. Becker Way." That this historic place—the site of some of the most important events in the history of our country, a place where Washington, Franklin, Jefferson, Madison, Hamilton, and other giants once tread—should bear Ed's name is a fitting testament to his native city's appreciation and affection.

Life on an appellate court tends to be isolated, and when I was on the Third Circuit, one of the constant bright spots for me was to pick up the phone and hear Ed's voice. Ed would start talking a hundred miles an hour about a case or an administrative matter or his latest project. I will sorely miss those calls. But I still expect to hear from Ed. The energy, the wisdom, the compassion, the optimism that Ed released into the world during his seventy-three years have not dissipated. They live on in his work and, most of all, in the hearts of the countless people he touched.